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VOL. IV.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1921

Term No. [redacted] 257

CHARLES D. NEWTON, AS ATTORNEY GENERAL OF THE STATE OF NEW YORK, EDWARD SWANN, AS DISTRICT ATTORNEY OF THE COUNTY OF NEW YORK AND LEWIS NIXON, CONSTITUTING THE PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK, FIRST DISTRICT, APPELLANTS,

vs.

CONSOLIDATED GAS COMPANY OF NEW YORK, RESPONDENT.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED MARCH 17, 1921

(File No. 28164.)

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CONSOLIDATED GAS COMPANY OF NEW YORK vs. NEWTON, ETC., *et al.* 6115

Before ABRAHAM S. GILBERT, Special Master.

NEW YORK, August 21, 1919.

Met pursuant to adjournment.

Present: MR. RANSOM, MR. VILAS, MR. GOETZ, of Counsel for Complainant.
MR. CHAMBERS, of Counsel for defendant Newton.
MR. HAYWARD and MR. CLARK, of Counsel for Public Service Commission. 6116
MR. O'BRIEN, of Counsel for defendant Swann.

Mr. Ransom: If the Court please, at the close of the hearing on August 11th, I made an offer to stipulate with respect to the value of land, an offer with respect to the values as assessed by the authorities of the city and state. The time may very soon come when I shall need to know what is the attitude of the de- 6117
fendants toward that offer, and I shall be glad if anything that is to be said regarding it may be said at this time, because if it is not available in lieu of the calling of witnesses, I shall have to proceed on that basis.

The Master: Mr. Chambers, have you anything to say?

Mr. Chambers: If your Honor please, that

6118 calls up two things. One is that on August 1, 1917, at page 944 of the record, I addressed to Judge Ransom a request for information concerning ten specific matters which are found on pages 944 and 945 of the record, and nothing has come of it.

Mr. Ransom: May I just say a word on that, to get that out of the way? That called for the preparation of an enormous quantity of data, probably some of which can never be prepared. I put a man to work on it with some assistants, the day the request was received. I expect to be able in a very short time to comply, at least
6119 in part, with Mr. Chambers' request.

Mr. Chambers: That information that we asked relates to the stipulation to which he refers. For instance, the first request is "area of each parcel or lot."

Mr. Ransom: No.

Mr. Chambers: Yes, it does, because we are unable to check up some of these parcels of property. Some we can check, and some we cannot.

Mr. Ransom: Anybody can compute the area of parcels of which the dimensions are shown. I may say that we have informally furnished to
6120 the defendants at their request figures regarding assessed values of these different properties and matters like that, which they said they wanted for the purpose of reaching a conclusion as to that stipulation.

Mr. Chambers: Well, one of the reasons why we cannot check some of these is because of the buildings or improvements. Further along the request referred to these buildings or improvements.

Mr. Ransom: I have made no suggestion or 6121
stipulation with respect to buildings or improvements.

Mr. Chambers: I know, but we cannot segregate it.

The Master: As I understand it, Judge Ransom is asking the defendants to stipulate that the assessed values of properties described by the witness orally, that is the land and buildings——

Mr. Ransom: No, the land exclusive of buildings.

Mr. Chambers: That is right, it relates only to the land. 6122

The Master: The land as pictured in pink on Exhibit 178, is of a value fixed by the City of New York for taxing purposes for the year 1918.

Mr. Ransom: Of at least that value for the purposes of this case, without prejudice to the rights of either party anywhere else.

The Master: That would mean, as I understand, that the entire plot or lot shown, without admitting that it is used in whole or in part for gas-making purposes, is of the value fixed——

Mr. Chambers: We will have to reframe the 6123
stipulation.

The Master: Is of at least the value fixed by the City of New York for taxation purposes. Now, are you prepared to make that stipulation?

Mr. Chambers: We have not completed it; we are working at it. We are taking it seriously.

6124 The Master: And you are not prepared to make that stipulation?

Mr. Chambers: No.

The Master: Are you prepared to make that stipulation, Mr. O'Brien?

Mr. O'Brien: No, your Honor.

The Master: Are you prepared, Major Clark?

Mr. Clark: No.

Mr. O'Brien: I want to answer your question——

The Master: You have answered it. You don't want to make that stipulation now, and you don't want to make it now?

6125 Mr. Chambers: I am not prepared to.

The Master: Call your next witness.

Mr. Chambers: Nor am I prepared to turn it down by any means.

The Master: I put my inquiry as I did, "Are you prepared to do it now", and I understand the gentlemen representing the defendants are not prepared to make that stipulation now.

Mr. Ransom: Of course, your Honor, from the viewpoint of the complainant, we will simply have to go ahead and offer our proof in our own way.

Mr. Chambers: That brings up the second question, and that is, if we had a little time to
6126 straighten that out. Your Honor knows I have not had a minute; I have not even had time to sit down, except here in Court, to go over that matter, and it is not fair to take up the time here in Court to try to listen to the testimony with one ear, and consult with the experts with the other. Now, if we had a little time, I would like to solve that and solve it soon, and get that out of the way.

The Master: I think it is a matter that ought 6127
to be discussed by counsel outside of Court. Call your witness. When you are ready to make a stipulation you can spread it on the record. If you can't agree on a stipulation, forget about it.

ARTHUR W. TEELE resumed the stand.

Mr. Ransom: With respect to the points that we were discussing at the hour of adjournment yesterday, which came up rather unexpectedly just at five o'clock, I would like to say a few words, your Honor, if I might. During the discussion which took place upon the admis- 6128
sibility of these books, in which your Honor felt that it was unnecessary to hear at any length from the counsel for the complainant, and in which the argument went on at very great length on the part of counsel for the defendants, with the result that a great many statements were made regarding both the law and the facts which were in no way borne out by the authorities, I fear that your Honor may have gained some impression from the authorities and from the course of the complainant with respect to modes of proof which were not fully warranted. I am, in a number 6129
of respects to which I shall refer, quite a bit at a loss as to just what your Honor had in mind, and just what your Honor meant to rule at the close of the hearing yesterday, and I am likewise very reluctant to believe that your Honor meant all that you said with respect to lack of respect for the precedents and the decisions of the various courts as to the modes of proof which are permissible in a case of

6130 this sort. The quality of proof and the mode of proof which was being offered and which is being offered and which will continue to be offered in behalf of the complainant in this case, is based upon the decisions of the Supreme Court of the United States and the other courts, and while of course we very gladly welcome suggestions from your Honor as to what may be in your opinion acceptable modes of verifying the regularity and the integrity of this system of accounts which has been kept by this company under the provisions of law and under the scrutiny of the regulative
6131 authorities of the State, before there is imposed on this company a burden so great as to amount almost in itself to a denial of justice, I do want to call your Honor's attention to certain of the authorities. Probably the most recent case in which the Supreme Court has had to pass upon modes of proof in a rate case is the so-called Arkansas rate case, the Rowland case, which was decided by the Supreme Court of the United States only last year, and is reported in 244 United States. Clearly I think the mode of proof which has been pursued in behalf of the complainant in this case
6132 is not only fully sustained by that case, but in reality goes very much beyond what was accepted and approved by the Supreme Court in that case. In the Arkansas case, if your Honor may remember, the railroad company sued the public authorities of the State of Arkansas, which included the State Railroad Commission, to enjoin as confiscatory a rate imposed by the State laws. The case naturally presented a twofold question. One, whether the

receipts and expenses of the company were 6133
such as to make that rate imposed by law confiscatory; and in the second place, wrapped up in that question was the matter of distribution and receipts and expenses between Intrastate and Interstate business. For the allocations there was and had been no adequate record made on the face of the books of the company. What was done in that case as a method of proof in behalf of the complainant in the District Court was this——

Mr. O'Brien: Are you talking about the Arkansas matter now?

Mr. Ransom: Yes. 6134

The Master: 244 United States.

Mr. O'Brien: I thought when he spoke about the intrastate and interstate propositions, that he was referring to the Minnesota rate cases; aren't you?

Mr. Ransom: No. In the Arkansas case there was organized a force or staff of accountants under the direction of a man named Hamilton, and these men went to the company's books, went to certain records back of those books, and they made up tabulations. Those tabulations were made in such a way as to represent, in their best judgment, the state- 6135
ments of the receipts and expenses and the distribution of them between the interstate and the intrastate business. Those tabulations were offered in the United States District Court and were received in evidence. The books themselves were not offered in evidence. The reports, the memoranda which had been used back of the books, were not received in evidence, and were not offered in evidence.

6136 The Master: Do you understand, Mr. Ransom, that I said anything about your being required to produce any of the vouchers or books here?

Mr. Ransom: I shall come to that in a moment, because I am not very clear just what your Honor did require, but I wish to refer to what was done. After the tabulations had been put in evidence, then, as the report of the District Court states, the books, the various books and records and the work sheets and the like were submitted to the accountants for the state and were examined by them. When
6137 the matter—these, of course, were received over objections, and as indicating the nature of the proof which was submitted to prove and sustain these tabulations, this quotation from the brief of the defendant public authorities and the Supreme Court of the United States, pages 73, 74, is pertinent. The brief says, as of Mr. Hamilton, who was the head of the staff——

The Master: I have read that.

Mr. Ransom (continuing):—testify that he saw them correctly made, but no man who made any of them was introduced, and none of
6138 the reports themselves were introduced.

The Master: I am not requiring you here to bring in your reports.

Mr. Ransom (continuing): No opportunity was afforded the defendants to cross-examine those who made these studies or reports, or to determine the accuracy and completeness thereof, or to determine the method employed by them in arriving at the results obtained, or whether they were acting under direct and

exclusive instructions from their superior offi- 6139
cers or agents, or to determine any other matter which might have become relevant in the course of the examination. The Court is asked to receive those reports as absolutely accurate, complete and true, to consider the divisions of time and the authorities set forth as conclusive, and all without the production and an opportunity for cross-examination of a single witness who reaches these conclusions.

The Master: May I interrupt for a minute?

Mr. Chambers: Reading from the brief of counsel?

Mr. Ransom: Reading from the brief of coun- 6140
sel, yes.

The Master: May I interrupt for a minute?

Mr. Ransom: Yes.

The Master: You seem to overlook what is in my mind and you probably, when I call it to your attention, will agree with me on that proposition, and that is this—that you will want me to make a finding based upon the result of operations. Am I correct in that?

Mr. Ransom: Surely.

The Master: Yes, you will want me to find that it costs a certain amount of money to make and supply the gas. 6141

Mr. Ransom: Surely.

The Master: You probably agree with me that I ought not to make any findings unless I am satisfied in my own mind as to the fact which I find; is that correct?

Mr. Ransom: Well, that is elementary.

The Master: All I said to you is, I won't be satisfied to make a finding unless you put in the proof as I want it. How can you escape

6142 that by any authority of any book? How can you meet that?

Mr. Ransom: I think I can meet it in this way: I think that your Honor with all due deference to the view which you express as to lack of deference for decisions of courts, your Honor ought within some limits have a respect for the modes of proof which have been followed in these rate cases and which have been upheld in these rate cases.

The Master: Not if they will not result in removing from my mind any doubt that I may have as to the finding I am asked to make. I
6143 do not care about rules, I do not care about precedents. I am following the law as I understand it, as laid down by the courts, that in a rate case I must find the facts free from their doubt. In other words, when I find that it costs you x cents or dollars to make a unit of gas, I am conscientiously of opinion that there is not any doubt in my mind about it. I should think that you would be as anxious to have me report when I make a finding that there is not any doubt of it at all, because these are the facts as I find them.

I should imagine that you would not want a
6144 record to go to the United States Supreme Court which might be criticized. All of these rules to which you refer are simply rules of evidence bearing upon a review by a superior court as to errors, perhaps, committed by the court below.

None of those cases attempt to say that the master cannot require proof satisfactory to him. If the master in some other case were satisfied in his own mind as to the proof offered,

in some other form, the United States Supreme 6145
Court upheld his view as a technical proposition of proof that there was no error and no violation of any established rule of law, that does not change my view at all, that in this case, when I base a finding on these books, I want the expert or the man who verified them or is vouching for them to go back to the first item and to check it sufficiently to be able to say that from his examination those books check and are correct.

You have, as I pointed out to you yesterday, at least two items. Another one will come into play and we might as well discuss it now. These 6146
books can undoubtedly be shown, on your own theory and in the way that I ask that it be shown, to be correct. I am assuming in ruling as I do that if Mr. Teele and his assistants go back to the timebook, take any period of time that you, he or counsel for the defendants select, that they will find the timesheets sent to the general office were correct when compared with the timebooks. I am assuming without knowing anything about this that you will be able to prove by Mr. Teele when he has done it that the delivery sheets or receipt sheets made at the time conform exactly to the report 6147
made by the superintendent of the plant. I believe, too, that if Mr. Teele goes into the books of the other companies, he will be able to testify that he had found they had expended a certain amount of money for construction during the year, justifying the apportionment of superintendence. I think I am entitled to have that. That is all there is to my point.

6148 Mr. Ransom: May I just say this word in closing?

The Master: I do not want to make any mistake about it. I want Mr. Teele to say, even at the expense of a few hours or a few days, or even at the expense of a week—which I think is possible—I would not hold him down to three days or three weeks—that he having checked those sheets furnished to the general office with original entries in the time books and with the delivery sheets and with the cost of construction as appearing from the books of the other companies, that they are correct.

6149 I am going to take his proof and I think I would be fairly well satisfied without much doubt in my mind that these books are correct.

Mr. Chambers: Your Honor, your proposition of——

Mr. Ransom: May I continue for a moment?

Mr. Chambers: I think you are in error about a certain point.

Mr. Ransom: A word further about the Arkansas case and then I shall refer to what I had more particularly in mind.

Mr. O'Brien: Will you follow that up, Judge?

The Master: Do not interrupt.

6150 Mr. Ransom: In the Arkansas case when it came to the Supreme Court of the United States, the Supreme Court commented upon the fact that the defendant in that case, the public authorities, had done what these defendants have done here. That is what the Supreme Court mildly characterized as taking a purely negative attitude. And then concerning the objection of the defendant Railroad Commis-

sioners and others, that this statistical proof 6151
offered by the Railroad Company in the form of elaborate statements and figures, as the Supreme Court called it, made up from books and records made available to the defendant, were not proved or placed in evidence; the Supreme Court said at pages 108 and 109 of 214 U. S.: "It is enough to say that the Railroad adopted the only practicable mode of presenting its results, that it exhibited its worksheets and data to the appellants, that the returns were made by the employees in the course of their business, and that if the appellants had desired to question any of the data, they could 6152
have called for further verification. It seems to us that technical rules are satisfied and that justice plainly requires this objection to be set aside."

Mr. Chambers: We do call for further verification.

Mr. Ransom: Upon the situation as it stands here, we, of course, are glad to follow whatever suggestions your Honor will make at this time as to the extent of verification which shall be required. This witness, taking for a moment, the question of the pay roll, has so far gone back to the memoranda, which certainly, 6153
from a practical point of view, certainly from the point of view of a business man who was considering investing his money, or from the point of view of an employer, who undertakes to pay out money, would be regarded as the document which could be checked and should be checked—namely, he has gone back to the contemporaneous weekly records made and kept by the person who is responsible, made

6154 and kept by the person who has to put his primary O. K. upon it, made by the person who had knowledge of the facts at the time. Now, if your Honor feels that to any extent you will indicate Mr. Teele should go back of that, we shall be glad to take the time to do it, provided the burden in that respect shall not have been made too onerous.

With respect to the receipt of coal and material, I am not sure that your Honor quite understood the situation in that respect. What better evidence could be of the receipt of material or the receipt of coal, than the receipt
6155 made by the man who is charged with the responsibility of receiving, the thing which is made up contemporaneously, attached to the form on which the voucher is made out. If there is any record, what record could be better; or if your Honor feels it is desirable in any number of instances to check that, to verify it by the other, but less valuable record, which is available in the works, why we have no objection to doing that. Your Honor, at different times yesterday indicated what seems to me rather different points of view as to just what should be done. At one time I understood your Honor to say that in all instances,
6156 or as was stated on page 2033 of the record, "if you expect to prove by Mr. Teele these records as an accurate statement of what is contained in all of the supporting records, or you expect to prove a statement prepared by him from these books and all the supporting records, I won't take it unless Mr. Teele goes back to the very first items which support everything that he knows about, and if he does

that, I will, in my judgment at this time"— 6157
and then your Honor was interrupted.

At a later time it was stated in this way: "I said I want him to take a period of time, just as he took January and December, and if counsel for the defense have any preference, or will indicate what months they want, I will do that, so that we can find out whether that is right. I am going to insist on Mr. Teele going back to the original time book and comparing that time book with some of the time sheets that came in; not all of them, but enough of them to make it clear upon the record that the probabilities are that they are all accurately 6158
kept."

As stated on page 2037 of the record: "I think they ought to be supported by the testimony of Mr. Teele, that he has done all he has testified he did, and just a little bit more, namely, that he has checked the bills for goods charged with the contemporaneous record made at the time, showing that they came in, and further, that he has checked the time cards certified by the superintendents sufficiently to make sure that the superintendents' O. K. is to be relied on with the time book itself. Then you have a complete record."
6159

The Master: I do not see anything inconsistent in the three statements that I made. I repeat what I said yesterday, and I have repeated it again this morning. I want Mr. Teele to be able to testify by an actual comparison between the time books, and the time sheets, to such extent as will justify his conclusion of fact or opinion.

6160 Mr. Ransom: Who is to be the judge of that?

The Master: I am.

Mr. Ransom: Then if you are to prescribe the mode in that respect, as the rule authorizes you to do, what do you consider proper proof?

The Master: I am going to make this statement: Mr. Teele suggested that it would be better to take a month to check up all the time sheets and delivery invoices, and the receipts attached.

Mr. Ransom: Does that mean in all the work, in all the plants, in all the branches, in all the shops?

6161 The Master: No, Mr. Teele has indicated that the better way would be to take a month in one of the plants. Now I am inclined to think that any one month would sufficiently test the accuracy of the records back to the time book and the original delivery sheet. If counsel for the defendants want to indicate what months in the year they would prefer to have the witness examine, I will accept their suggestion. If counsel for defendants do not want to indicate, I will take the lightest month of the year, which I assume would be a summer month, wouldn't it?

6162 The Witness: It would be the lightest in some departments, and a winter month in others. I would suggest that you take the month of December, where we have partially checked this, where we have verified a distribution of that pay roll.

The Master: Unless there is some other suggestion made I will suggest that the witness verify the record for December.

Mr. Ransom: Of 1918?

The Master: Yes. 6163

Mr. O'Brien: Won't your Honor hear us before you determine the question?

The Master: Yes. Now, there is still another question that probably does not involve a tremendous lot of money, and that is the apportionment of superintendence and engineering. The evidence discloses that that is based upon the amount of construction work done by the complainant company as compared with the work done by other companies. Now, he has not verified that at all.

Mr. Ransom: Are you sure about that?

The Master: I understood him to say that. 6164

Mr. Ransom: I am talking as much at random on that as your Honor is, because he has been at work upon accounts for the company.

The Master: If he has, then it would obviate what I was about to say. I think that Mr. Teele ought to satisfy himself that the reports made by other companies to this company as to the amount of work done was accurately reported, so that he can say that the apportionment was made correctly.

Mr. Ransom: I am under the impression with respect to most of these things that came up yesterday and to-day, that most of the work 6165 which your Honor has indicated has been done, and the rest of it, if it is limited in this way to typical months and typical plants or branches, can readily be done. Perhaps for example, with respect to construction, I know that the construction of the Consolidated Gas Company has been checked in a way which would be satisfactory to your Honor.

The Master: I haven't any doubt about that.

6166 What I am in doubt about is whether he has information as to other companies. Let us see what Mr. Chambers has to say about it.

Mr. Chambers: Judge Ransom has consumed half an hour, so we ought to have a few minutes. I think brothers O'Brien and Hayward and Clark will concur with me when I say that all we want in this case is a fair opportunity to get at the facts. Now, your Honor has missed, in my judgment, the main point, and that is this: If this company was making gas and selling gas all by itself we would have a different situation. But, this
6167 company is all mixed up with the Standard, the Mutual, the New Amsterdam. Now, you want to determine primarily, I take it, how much it costs them to make gas. Now, aren't the defendants entitled to have called here, as to how much coal they use in a certain plant, for cross-examination, the superintendent and those who know how much coal came in, so that we may ask them if they are working for the Standard, or the Mutual or the Consolidated, and whether that gas was made for the Standard, the Mutual or the Consolidated.

Aren't we entitled in this case to have these
6168 superintendents called, because of the fact that these companies are all mixed up? Now, it may be that at one of these plants the Consolidated Company received so many tons of coal. It may be that they received so many gallons of oil, and it may be, if we have the opportunity to examine the superintendents, that some of that oil and some of that coal, although charged to the Consolidated Company on their books, was used for the Standard. It

may be it was used by that coke company. 6169
They are all mixed up. Now, because this is a holding company and affiliated with all these other companies, I say that we are entitled to have these men called for cross-examination. Judge Nichols up there—that company was not a holding company, but he made the complainant in that case call anybody we nominated for the purpose of cross-examination, so as to arrive at the truth. He said any time he admitted any paper or book it was with the proviso that we might nominate anybody in the employ of the company that we wanted to cross-examine, he would put them on for cross- 6170
examination. Now, that is reasonable and that is a fair rule. I am satisfied that we are entitled to cross-examine these superintendents to find out whether they are working for the Standard or the Mutual or the Consolidated, and how much of their time is devoted, and whether that gas made at a given plant is made for the Consolidated or made for the Standard. It is very significant here that they sell gas to the Standard—I pointed it out here the other day—for 44 cents per thousand cubic feet. Now, it may be that some of this gas is made at this plant where this coal was received. We 6171
are entitled to inquire from these employes. None of these cases that he cites had any such situation as this presented by this case. All of these cases he cites—none of them are in point. They are where they were trying to fix a rate where the company was not a holding company and was not mixed up in business with other independent companies. We are not satisfied with your Honor's ruling, we

6172 think we are entitled to cross-examine these superintendents.

The Master: Mr. O'Brien, do you want to say anything?

Mr. O'Brien: Your Honor's attitude at the close of the session yesterday with respect to what you are going to require this witness to do is in the direction of what we think is right.

The Master: But not nearly as far as you want me to go?

Mr. O'Brien: Oh, it is away far from what you ought to do.

The Master: I understand that. I may go
6173 further before I get through. I am trying to keep my mind upon the one thing that is before me from day to day. Just now we are trying to prove the general accuracy of their books of account and a tabulation made by this witness from them, and my mind is directed entirely and only to that, and what I have said has to do only with that. When it comes to a situation where I am asked to make a finding as to what it costs to make gas, I may impose further requirements and conditions. I may require them to call particular witnesses. I may do some of the things that Judge Nichols has
6174 done. But, just now I am trying to lay a firm foundation for the finding of fact that these books are to my satisfaction regular and proper books of account accurately and honestly kept, and that the tabulations which I take it this witness has prepared, made from these books, is an accurate tabulation of what it purports to be. Now, that is as far as I am going now, Mr. O'Brien. I am not foreclosing

myself as to what I may do further on in the 6175
requirement of further proof.

Mr. O'Brien: Well, I think we are flirting with danger.

The Master: I am not afraid of danger.

Mr. O'Brien: I think we would save the Gas Company some time and money. We are the conservators among the defendants. I will prove that for this reason: You are going to find, if you follow any course, if you follow counsel's suggestion and we get into cross-examination of this witness, and I say this with all respect to Mr. Teele, because he has been given a certain time, a certain bit of 6176
work, and a certain time to do it, and all any accountant can do in that time is to do what is possible under the conditions, and he is not going to be responsible for errors, and there are errors going to be found, serious errors in these accounts.

The Master: Wait until they turn up.

Mr. O'Brien: When that comes in, he will have to ask for time to straighten it out.

The Master: Well, let him worry about it.

Mr. O'Brien: I am only showing for the time being that we will save time. These errors are going to be found. Your Honor was cor- 6177
rect when you ruled that they would have to be verified. Let me give you just a description.

The Master: I am glad counsel for the defendant agrees with me in some things.

Mr. O'Brien: I referred the other day to my little experience in the Kings County case, with reference to what was required to be done to show a reasonable degree by Justice Greenbaum, and they had the chief clerk of the

6178 works in, and he told how he transcribed from the books that came in daily to him reporting, to a monthly statement, and from the monthly statement on to a trial sheet, and from that into the manufacturing book, from which book then other reports were made to the head office. Well, now, we go into that, and they used practically the same printed form of report in the generating houses, and while these forms are different in some branches of the work, they are substantially the same thing. And here is what happened, your Honor. We went in there, and we found that so far as the
6179 steam coal was concerned, the coal which they used at the boiler house, that there was a very crude, unreliable record kept of it, it was utterly unreliable, so that the Court discarded it in the end. We found that so far as the gas oil used was concerned, while they made certain notations of the gas made on the gas maker's sheet, of the amount of oil used per run, as they called it, they did not rely on that in their monthly reports and in their manufacturing book and in the report that finally went to the office, but they demanded entirely—they discarded that method of measurement at the time
6180 it went into the making of the gas and used simply the measurement made by a yard stick in the tank that was out there and had the oil subjected to the variations that would come with a varied temperature. We found further that when this clerk who makes up these records, in the reports sent in, he sent in certain computations, and in the records preserved were his notations, they had pages drawn with squares or rectangles of space in which he

would note the calculations made, and we 6181
found all the way through, when we got right
down to bed rock, that they had used a certain
coefficient all the time to cover leakage and
wastage every day, for every thousand cubic
feet of gas made per day, and that little coeffi-
cient was run in every day. It did not repre-
sent actual coal used, but they used it, he was
told to use it, and did use it in making up the
computations. We found certain other matters
were unreliable, and the result of that examina-
tion was the Court absolutely refused to take
the manufacturing book. Now, that same kind
of a book, that same kind of a record, is kept 6182
here, and I presume made up practically and
substantially in the same way. I paid a little
visit to the Ninety-ninth Street plant and
looked around, and I went to the generating
house and talked to Barry, one of the operators,
or the gas foreman there, I saw the w ,y he
made a note, I made my own notes of his report
as he was making it, I saw the coal being
brought in, or rather the coke that was being
brought in, because they were using no coal
at that time, and they were bringing all of
this coke directly from the barge to the genera-
tor house. It did not go into stock physically. 6183
Where it was weighed, we got out finally across
the marginal street over into the yard where
they stored the coal, and in there was the ma-
chinery for loading up the coke from the barge
into the wagons, the dump-carts that brought it
across, and a short space away from where
they piled it up was a little old man weighing
the coal, a benign little creature.

6184 Mr. Ransom: You are anticipating now, you are testifying.

Mr. O'Brien: That man is making—he was in there with his scales, and on his little penciled sheets he was making a notation of this coke delivered from the—presumably from the Astoria company. When it came through the medium of another company subsidiary to the complainant, the National Coal & Coke Company, I don't know, but this man was making these notations of these various dump-carts of coke that came from that barge. Now, they have that record, presumably. They have
6185 that record, and then they have it totalled up, and those comparisons might be made, and the fact that Mr. DeCastro, the superintendent, takes a lump statement of the amount of coke or coal delivered out of one barge or six barges and says that is correct and sends it in, that does not produce verity or confidence and conclusion.

Now, that is the comparison I assume that your Honor had in mind. Let me say further, as to the possibilities of error, I went into the works office and I had a chance to look at these sheets.

6186 Mr. Ransom: Do you say this under oath?

Mr. O'Brien: Yes, I certainly will. I have got the notation. I refer to the records of July 3rd, 1919.

Mr. Ransom: Wouldn't it be better to wait until the testimony comes in?

The Master: He can state it.

Mr. O'Brien: Your Honor, there was an apparent error there. I asked him to explain it, and of course he declined to say anything.

The Master: Would you rather have Mr. 6187
Teele check up July?

Mr. O'Brien: Well, that is of 1919. I only refer to that as an instance of the possibilities of error and things that must be traced out. What I want to emphasize is this, the fact is this. There is a variation from the time book. The time book is a permanent record, it is kept there in the handwriting of the man who made that notation, and that Second Avenue case is a valuable one, it shows how far the New York Courts have gone in the matter of producing witnesses who made the notations, and the notations made.

6188

The Master: We are now in the Federal Court, Mr. O'Brien.

Mr. O'Brien: I think you will follow the rule of the State Courts.

The Master: Oh no, not in this case.

Mr. O'Brien: I think you will not only as to the examination of the witnesses, I m an as to the rules as to witnesses, but also as to the character of evidence.

Mr. Ransom: You don't want to follow the rule of any court?

Mr. O'Brien: Bear with me, Judge, and I will be through. I want to call your attention 6189
to the fact, your Honor, that the time book has down in plain English the character——

The Master: You referred to that yesterday, and you carried it over in a numbered system?

Mr. O'Brien: Yes. They reach the point of view where everything is reduced to system, one of the curses of the present age, the present generation, system, systematized.

6190 **The Master: Well, *some people think* differently.**

Mr. O'Brien: They spend a lot of time, you know, in checking up employees in their time, and with all that goes a lot of wastage. However, that is a diversion from what I am driving at. Somebody turns those descriptions of the time book into numbers, and the numbers go in with a report and then they are put into this machine.

The Master: Mr. Teele cannot testify that the reports furnished to the accounting department are correct when compared to the time

6191 **book unless he identifies the numbers with the work done. He has got to do that.**

Mr. O'Brien: He certainly can't.

The Master: Well, that is what I want him to do.

Mr. O'Brien: And then you will find, your Honor, that of course there are other branches of this situation. This works end of it is the minor one. They don't make so much gas, compared with some of the important matters, the delivery of material, delivery of gas oil, the deliveries of coal, the amount of coal used, and the intercorporate relationships here.

6192 **The Master: Let's take one step at a time.**

Mr. O'Brien: So much of it has got to be known, and we must proceed along that line.

The Master: Let's take one step at a time.

Mr. O'Brien: I am being heard on this, and I want to drive home to your Honor's mind the fact that they should be compelled to bring in their vouchers, the time slips and so on, and allow us to examine them and inspect them in court.

The Master: Yes, I want to. I have made a ruling on that. Have you any suggestion as to the month or the week or the plant? 6193

Mr. O'Brien: I don't want to partake in that, unless I be assumed to be assenting to it. Of course, if I were suggesting something, I would certainly take some month that these junior accountants have not been working on.

The Master: I will let the witness take his own month and conduct his test as to the accuracy of these records, and after he has exhausted the information available, of course my notion of the case, I shall take his testimony. 6194

Mr. O'Brien: I assume that either for the purposes of direct-examination or for purposes of cross-examination, counsel will bring in the original data for those particular months, so that we will have in the cross-examination an opportunity to quiz him about it.

The Master: I won't make any direction at this time.

Mr. O'Brien: That will be important, your Honor, and if at the time there comes a conviction that these accounts are correct, so much the better.

The Master: I think it might help a little bit if when the witness undertakes to testify to the examination of the time book and the sheets, that an illustration book and an illustration sheet be brought down. 6195

Mr. Ransom: Of course there is one book that Mr. O'Brien virtually placed in evidence yesterday. He has not yet offered it, and neither have I, but he is laying the entire foundation, I assume, as part of his case.

6196 The Master: I think that might be a good thing to do. I am not going to make any direction.

Mr. Ransom: Two of them are here in court, at the request of the defendant.

The Master: Does that time book cover December of the Ninety-ninth Street plant?

Mr. Ransom: I am quite sure that it does. It covers a very considerable period of time, Ninety-ninth and Twenty-first Street.

Mr. Teele: No.

The Master: It does not, says Mr. Teele. It is a small matter to bring down a time book.

6197 Mr. Ransom: It covers January of 1918.

Mr. O'Brien: We were on the month of March, your Honor.

Mr. Ransom: It stopped before December, 1918, January or March.

The Master: You can check up January, 1918, can you, using this particular time book?

The Witness: Yes.

The Master: Do that, and this time book is now marked for identification and is in court, so that on cross-examination counsel can inquire of you as to just how you compared it.

6198 Have that time book here and have some of those sheets and the reports which came from the time books and have some of the delivery sheets. All I want is to be satisfied by competent proof of an expert, and I have ruled that Mr. Teele is competent to testify as an expert, that these records are correct.

Mr. O'Brien: I call your attention to what Mr. Teele said yesterday about the Ninety-ninth Street works, which is confirmatory of

your Honor's judgment in this matter, as to 6199
requiring the comparisons to be made. They use a standard weight for these carts.

The Master: That is quite clear in the record, and that is quite reasonable.

Mr. O'Brien: And that covered a margin of error and ought to be taken account of.

The Master: That will be met in all of these cases, there is some margin of possible error, taking these books, assuming that they have been absolutely correct in conformity with a precise system and checked as they may, with every possibility that human ingenuity may indicate, such errors will happen. That is liable 6200
to happen. But generally speaking, if Mr. Teele and his experts and his assistants go back as far as I want them to go, and testify that as a result of these checks, these books are subsequently and reasonably correct, he has already indicated that there are some minor errors that have been found in comparison of that system, whatever it is called—the Hollerith system—and I can readily understand how it might happen, but generally speaking, having in mind the possibility of unsubstantial and rather unimportant errors, if those books are correct, I am going to take 6201
them up to that point. That is as far as I have gone. I am not indicating what I may require later on, as I have already said. It may very well be that I shall ask the complainant to make—before making a finding on how much it cost to produce a thousand cubic feet of gas, to require a good deal more of proof, and it depends altogether on how much proof they produce.

6202 Mr. O'Brien: That is all we want, and one reason I want it is, as I said, we don't want an abortion in this case, and most of the rate cases have gone up, as I said yesterday, and none of them found for the gas companies or the public utility companies. They went back.

The Master: If you gentlemen will only have in mind the fact that if Judge Ransom falls short of what I have proposed, and what I think proves a fact to my satisfaction, they won't get a finding, you will appreciate at once that I am trying to protect the interests of the defendants and you need not have any concern
6203 about the ultimate result. I may be technically in error here and there in the admission and exclusion of testimony and limiting examinations, but when the case is finished, I think all of you gentlemen will agree, not perhaps as to the conclusion that I have reached, but that the case has been fully presented so that the Court will have no complaint.

Mr. Ransom: May I just say a word? Of course, the complainant in this case realizes that to have any hope of a favorable finding it must establish this case by evidence acceptable to your Honor under the authorities, and
6204 must establish it by a clear-cut and definite and unmistakable margin. We of course only can prove one thing at a time. We expect to call to the stand witnesses who have the kind of direct and practical knowledge, the knowledge of the works from the engineering point of view to which counsel has referred, but we can only do one thing at a time. That only point that disturbs me with respect to this case, and which creates a problem of diffi-

culty, is that when I as a member of the Bar, 6205
with some familiarity with these rate cases
and with what has been done and what has
been sustained in the courts in other cases,
proceed with a line of proof in behalf of the
complainant which has been well marked out
over the objections of the public authorities
just as vociferous as the authorities are in this
case, that I am met with an attitude on the
part of the court of professed disrespect for
precedence, and on the part of counsel for the
defendants of jeering references to a distin-
guished judge as Sloan's Liniment, and on the
part of the representative of the constitutional 6206
law officer of the State that he doesn't care a
cent for precedence, that is the kind of thing
which to me, as a member of the Bar, brings
a degree of question in a case like this as to
the force of this proceeding.

The Master: There is no attitude on the part of anybody here of having a disrespect for the law, and let us have it clearly understood. The law applicable to a case of this kind is laid down, and all counsel and the court itself is trying to follow the rules of law applicable to this case. But when it comes to the mode of proof, and as to rulings made by other judges 6207
and other courts in arriving at the facts, the master stands by what he has already said. He is going to have it proved to his satisfaction, in his way, and not in some other judge's way.

Mr. Ransom: Your Honor has, under the equity rule, full authority to prescribe the mode in which matters requiring evidence, shall be proved. I bow to your Honor's ruling in that

6208 respect. It puts upon us a burden which I had not anticipated, because of our reliance upon the precedence to which I have directed attention. Under the circumstances we, of course, shall gladly comply and supply that proof, and I am compelled to suggest at this time an adjournment until Monday morning until the checking which has been indicated may be carried to completion.

The Master: Why?

Mr. Ransom: If your Honor will adjourn until Monday morning at ten o'clock, I anticipate that the facts necessary——

6209 The Master: We will run next week from 9:15 till one.

Mr. Ransom: Well, 9:15 on Monday morning.

Mr. Chambers: I ask that we adjourn next week on the 26th to September 4th.

Mr. Ransom: Suppose we leave that question until we have had the matter before Judge Mayer.

The Master: The 26th is Tuesday.

Mr. Chambers: Yes, the night of Tuesday.

The Master: I won't do it. I might adjourn Wednesday night until the following Tuesday,

6210 but I won't do it Tuesday in any event. I can dispose of that when we get along to it a little later. We will adjourn until 9:15 Monday morning.

Mr. Chambers: Now, if your Honor please, you and I were put in the same category as saying something about precedents. What you and I, of course, had in mind, I think, is precedent that is not in point. All of these cases which he cited——

The Master: I will go further than that. 6211

Mr. Chambers: That is what I had in mind.

The Master: I will go further than that, and I say I won't be bound by any precedent with reference to the mode of proof and to the quantum of the proof; that if Judge Greenbaum directed the proof to come in in one form, or some other Judge directed it to come in in some other form, that I do not feel bound by those precedents. I go a little further than you, but I have no hesitation in saying so.

Mr. Chambers: There is no precedent like this.

Mr. O'Brien: Speaking about precedents 6212 and about Judge Ransom's remark, would it be too much to request from counsel for the Complainant, when he knows he has a man on the other side interested keenly in this case, and a Master of wide experience with the law and every branch of it, that when he cites authorities, we get the whole case, and if it is some court below, or it is an *obiter dictum*, he will say it when he is referring to it. Your Honor will note that many times there are many things done in a rate decision, many points that are passed upon which would not apply in another case, because frequently 6213 counsel on both sides will consent to it. For instance, the reproduction new cost theory is adopted in some decisions, and in other cases one side or the other objects to the same method, and that would mean the Court had approved that particular method. And so in this case he cited the Arkansas case, to which he referred, that is a good illustration of what I am referring to, the other side apparently

6214 did not demand any more, did not require any more, and that will not apply here.

The Master: As to Hayward, Chambers, O'Brien and Ransom, the record is replete with many statements, and Major Clark, representing the Public Service Commission, never gets a chance. Let Major Clark have his say.

Mr. Clark: I just wanted to say in connection with your Honor's ruling, we take the position that he should go back and take the original records, not merely taking samples, and taking sample months of them, for the reason that if he should take a sample month

6215 at one plant, for instance, the 99th street plant, there would be no possible proof that it would leave no assumption as to the accuracy of the records at the 21st street plant which are kept by a different man.

The Master: I shall assume, Mr. Clark, that the checking up of any plant will indicate the general reliability of the records.

Mr. Clark: Our objection to that is that the reliability of this testimony is no more strong than the reliability of the original documents. You can't build up these books and make them stronger by sending in monthly reports than

6216 they are originally.

The Master: No. Here is the way it appeals to me. Perhaps I have not made myself entirely clear. The defendants on the one hand say you can only prove the items that you now seek to prove by bringing in all of your original data.

Mr. Clark: That has not been our idea.

The Master: Well, it is Mr. O'Brien's, and to some extent Mr. Chambers'. You have got to

bring in all of the original vouchers, you have 6217
got to bring the witnessess to prove they made
the entries at the time of these original papers,
you have got to bring in the men who made the
original entries in the time book and prove
their accuracy, that they were made contem-
poraneously and were correct at the time; you
have to bring in the witness who received the
coal and oil, and have them testify that they
received it and identify the memorandum made
at the time, you have got to bring in the men
who made the entries in these other books and
have them testify to the accuracy of the records.
On that general line I have agreed with Judge 6218
Ransom that when he proves a complete ac-
counting system in a big enterprise, and he
proves that the Public Service Commission
have required certain accounts to be kept, and
he proves that they have a completely or-
ganized accounting system from step to step,
with the usual checks that obtain in a business
enterprise like this, and he proves that an ex-
pert like Mr. Teele has gone into these records
and has tested them here, there and in other
parts, and has tested them to the point of going
back to the original source of records kept in
the usual course of business, and he starts in 6219
and he checks up his time book with his time
sheets either for months, or here and there
at different months, or in several plants, or
in one plant, that the result of that examina-
tion leads me to the thought that I think is
justified by the authorities which I do respect
as laying the law down as a rule in that re-
spect, that those books may be received in evi-
dence without calling all these witnesses, and

6220 without calling into court these original records. Judge Ransom on the other hand I felt stopped short of what these very cases on which he relies require me to have before making this finding, namely, that the expert who testified to the tabulations or to the accuracy of the books and records had gone back of the original records kept at the time and checked them up from step to step, so that he could testify and I could accept his statement that this was a complete system, that he had checked it up and that he had audited it and that as a result of his examination he is able to testify
6221 that the figures in these books that I have received in evidence are correct with the possible exception of errors not bearing heavily upon the general result, and that the tabulations that he has made from them were correct for the information of the Court, and so it has developed a situation where I have not entirely agreed with either side, but generally speaking I have sustained Judge Ransom's contention that he must not bring in all these vouchers and all these witnesses.

Mr. Clark: That is not our contention, but we contend that these tabulations should be
6222 made up from the original documents and should not be made up from transcripts from them, because no transcription of those original documents is of any more value than the original document. Unless you prove that your original document is worthy of belief, you have not proved any of these books.

The Master: In that respect I do not follow

you, and do not sustain you. As I said the 6223
other day, there has been a very substantial development in law as to the weight to be given the records and papers and vouchers kept in the ordinary course of business. I think that there has been a very substantial improvement in the notion that you ought to have a witness come and swear to every little thing. I think that in the light of experience the courts have reached the view that I reach, that taking any ordinary business or enterprise which shows the goods were received and that goods went out, that money was paid, or money came in, that time was spent, time sheets and time records upon 6224
which they pay out their money, generally speaking, ninety-nine and a fraction times out of a hundred are correct.

Mr. Clark: They are just as correct, if your Honor please, as the man who makes them originally.

The Master: Yes, but generally speaking in a big enterprise like this, errors are quickly discovered.

Mr. Clark: The fact that Mr. De Pastro at one plant is a good bookkeeper, does not prove that anybody at the 21st street plant is a good bookkeeper.

6225

The Master: No, but having as a basis that the 99th street or 42nd street or any other plant as testified, checked up correctly, having in mind the general course of this business and all the safeguards that must be thrown around it in order not to have the company lose its funds and its assets by theft or otherwise, carelessness or dishonesty, I think the Courts are justi-

6226 fied in reaching the conclusion, as I believe they have, that the time has come when some weight and a good deal of force must be given to records kept in that way.

Mr. O'Brien: If you press that so far, you are going to have a case made up without any witness under oath as to the facts.

The Master: No.

Mr. O'Brien: The books are not sworn testimony. Suppose that we found there was a glaring error, amounting to millions of dollars or thousands of dollars on some scheme, you could not prove that Mr. Brundage was guilty
6227 of perjury. It is the fault of the system. You would not have any witness here under oath testifying to the principal facts.

The Master: I am looking at it from the standpoint of the character of the case, the issue involved, and the fact to be proved. To illustrate the difference between this situation, Mr. O'Brien, and another situation that I can point out to you, the production of books by Altman & Company, kept in the regular course, indicating that on the first of July, 1919, they delivered one hundred dollars worth of merchandise to me, will not and could not be accepted by a court, could not be in the nature of things—
6228 that I, a customer of Altman's, might be bound by the report of entry made by a subordinate. You have a different kind of a case here; that is the trouble with it.

Mr. O'Brien: Your Honor is going to see this. Here is the fault with this system that we are building up here——

The Master: Let Mr. Clark finish his statement and let the stenographers go, and then

if we want to chat about the thing, I will chat about it. 6229

Mr. Clark: The only thing I wanted to call your attention to was that we have spent a good deal of time in a discussion of the weekly time sheets and the delivery sheets, and I suppose it was still in the Master's mind the great mass of monthly reports which make up a considerable part of the entries in this book that do not have to do with either of those matters, and which are far less contained in the contemporaneous documents than either of the matters we have taken up.

The Master: What kind of reports? 6230

Mr. Clark: That show the gas used. The monthly report that shows the gas used, the monthly report that shows the coal used, the monthly report that shows other materials used. There were fully a hundred of those reports, which upon the bulk of the entries in these books and those are still less contemporaneous than the weekly reports on labor.

The Master: So that there may be no misunderstanding about it, my ruling in effect is this: I did not have in mind that there were any other particular instances where reports were based upon other records kept. My view about it is that the accountant in certifying 6231 to the accuracy in his opinion of these books in evidence and to the tabulation about to be offered, ought to go back, for any particular period of time that he selects, to whatever original books or entries there may be.

Mr. Ransom: May I just say a word on that? I think in every instance, with one possible exception, of course, that question comes up

6232 with probably fifteen items, but I think in every instance, with one other possible exception, yesterday there was developed a point where that had not been done. Of course, the point testified with respect to the situation was this—that Mr. Teele, as an accountant, out of his expert view, had gone back through a document which he thought far enough. I found there was another instance where the same question might be raised. I, of course, could not anticipate what view your Honor would take about it, but I recognized and defer to your Honor's view that where there are
6233 other contemporaneous records, even though from an accounting standpoint they are less valuable and less acceptable, from an accounting basis, than those which the witness did get—that whatever other contemporaneous records there are, should be likewise examined with respect to their tally with the reports of the districts.

The Master: I understand that.

Mr. O'Brien: You better anticipate the situation with regard to gas bought from other companies.

The Master: There is nothing you want to
6234 say on the record, Mr. Chambers?

Mr. Chambers: No.

Adjourned until Monday, August 25, 1919, at 9:15 A. M.

Last Complainant's Exhibit 204.
Last Defendants' Exhibit U.

CONSOLIDATED GAS COMPANY OF NEW YORK vs. NEWTON, ETC., *et al.* 6235

Before ABRAHAM S. GILBERT, Special Master.

NEW YORK, August 25, 1919.

Met pursuant to adjournment.

Present: MR. RANSOM, MR. VILAS, MR. GOETZ, of Counsel for Complainant.
MR. CHAMBERS, of Counsel for defendant Newton.
MR. HAYWARD and MR. CLARK, of Counsel for Public Service Commission. 6236
MR. O'BRIEN, of Counsel for defendant Swann.

ARTHUR W. TEELE resumed the stand.
DIRECT-EXAMINATION resumed.
By Mr. Ransom:
Q. Mr. Teele, I show you a statement called "Revenues and Expenses of the gas business of the Consolidated Gas Company for the year ending December 31, 1918". Is this the document which has been prepared by you with the aid of your staff? 6237
A. It is.
Mr. Ransom: I ask to have it marked for identification.
The document was marked "Complainant's Exhibit No. 205" for identification.
Q. Was this prepared by you from the vouchers,

6238 books and records of the Consolidated Gas Company, in the manner which you have described?

A. It was.

Mr. Chambers: I object to that unless he will tell us exactly what he used in making up the schedule.

Mr. Ransom: We will get to that.

Mr. Chambers: We want to know the very papers.

The Master: You will know, before I allow it in evidence, Mr. Chambers.

Q. Now, this document is made up of——

Mr. Chambers: He said he used them now,

6239 without giving us a bill of particulars.

The Master: It won't get into evidence until you know just exactly how it was made up.

Q. This document is made up of a summary statement which is sheet 1, Mr. Teele?

A. Yes, sir.

Mr. Hayward: If your Honor please, I think Judge Ransom should not lead so intelligent a witness as this is. Why not let the witness tell us how he prepared this, in fairness to both sides. Why does counsel have to put the words in his mouth?

6240 The Master: You know my views about leading questions.

Mr. Hayward: I think, as a matter of fact, if the Master please, that this witness knows more, strange as it may seem, than counsel does, about how he prepared this.

Mr. Ransom: It was merely a preliminary question.

The Master: It was just directing attention to what the first sheet was.

Q. Then there are certain supporting schedules 6241
which refer to the different items?

A. There are.

Q. Fourteen or more?

A. There are.

Q. Take the first item, sales of gas, does that item and its supporting schedules set forth the number of cubic feet of gas sold by the complainant to its consumers during the year 1918?

Mr. O'Brien: I object to that as incompetent, irrelevant and immaterial.

Mr. Chambers: Now he is going into the contents of the paper, which is incompetent in 6242
itself.

The Master: I understand that the question is laid simply to the form of the paper, rather than to the truth of the items in it. If Judge Ransom's question is intended to prove the accuracy of the items in this schedule, I won't allow it. If it is simply as a description of the form and of the manner of the make-up of the paper and scope of the paper——

Mr. Chambers: If the Master please, if it is designed for that purpose, it is certainly a very bungling way of putting the question.

The Master: That may be, but as I under- 6243
stand it, I will allow it.

Q. Does it?

A. It does.

Q. And also the revenues from such sale of gas?

A. It does.

Mr. O'Brien: I record the same objection.

The Master: Some ruling.

Mr. O'Brien: Exception.

6244 Q. Upon these schedules are certain reference numbers in brackets. What are they, and what do they indicate?

A. They are the corresponding account numbers in the uniform system of accounts.

Q. These appear throughout this summary and the supporting schedules?

A. Yes, sir.

Q. And that is true all through?

A. Yes, sir.

Q. In certain instances no such number is given. Is that because of the absence of any corresponding account?

6245 A. It is.

Q. Now, what do the ledger folios hereon mean?

A. They mean the ledger folios of the operating ledger of the company, upon which appear the amounts so marked.

Q. And that is true throughout these schedules?

A. It is.

Q. For example, on Schedule 1, the item of "Commercial metered lighting at 80 cents (436)", that means that there is a title in the uniform system of accounts which bears that number, and a similar name?

6246 A. It does.

Q. Now, is the total of the gas sales of the complainant for the year 1918 as shown on Schedule 1 also shown in the company's operating ledger for 1918?

Mr. O'Brien: I object to the question as incompetent, irrelevant and immaterial.

Mr. Chambers: The same objection.

The Master: I will allow it. Exception.

The Witness: The total amount is so shown. 6247

Mr. Chambers: Your Honor, the viciousness of that is that he is now asking questions that tend to show that he has already proved the total amount of gas sold.

The Court: No, he has not proved it, that is the answer.

Mr. O'Brien: Then as I understand it, all of these questions are being received by your Honor on the understanding that they are designed and will be received solely for showing the method adopted in drawing up these schedules.

6248

The Master: Correct.

Mr. Ransom: What was the answer?

The Witness: The total amount in dollars is so shown.

Q. At what point in the ledger?

A. On folio 1133.

Mr. Chambers: Which ledger?

The Witness: Operating ledger section A.

Q. Now take the first item on Schedule 1, commercial metered lighting at 80 cents. What is included under that catagory, and what is meant by the classification "commercial metered lighting"?

A. All of the gas sold by the company, other than 6249 that included under municipal lighting or under prepaid gas.

Q. All that is sold to consumers other than municipalities?

Mr. O'Brien: He did not say consumers. Does that——

The Witness: I should have said all to consumers.

6250 Q. And it does not include such gas as is sold to consumers through prepaid meters?

A. It does not. That is separately stated.

The Master: What do you mean by prepayment meters? Is it slot meters?

The Witness: Yes, meters in which the collection for the gas is made before the gas is delivered. That collection is made in the meter itself, by a mechanical arrangement.

The Master: Is that the only instance, where that is done by these slot machine meters? Or rather, are there other instances where gas is prepaid?

6251 The Witness: No, that is the only case of prepaid gas.

The Master: Does it include gas sold to other companies?

The Witness: It does not.

Q. What is meant by the term "Municipal lighting at 75 cents, account 431"?

A. That is the lighting for public buildings, which is sold at the rate of 75 cents.

The Master: In other words, it is gas sold to the City of New York?

The Witness: It is gas sold to the City of

6252 New York.

Q. Have you fully defined prepaid gas?

A. Yes, I think so.

Q. In this schedule references are made to certain branch offices and to the general office. Will you just identify what is meant by the branch offices in so far as commercial metered and prepaid gas is concerned?

A. The gas sold by the company is reported

through branch offices which read the meters within 6253
the geographical districts covered by the area assigned to them, and they report each for their own district.

Q. Are there any instances in which the record of commercial metered lighting is kept and the accounts handled through the general office?

Mr. Chambers: I object to that on the ground that this is a question for some one who knows about the company's business. How does he know? You see, he calls for his knowledge as to what the company is doing. All he knows is the figures from the books.

The Master: It is based upon an examination 6254
of the books and what he discovered from that examination.

Mr. Chambers: Well, is it?

Mr. Ransom: And of the underlying data.

The Master: I will allow the question.

Mr. Chambers: Exception.

A. There are certain consumers of the company who have meters in different districts and for their convenience the company has the reading of the various meters forwarded to the general office so that the accounts may be settled at that one place rather than in various different offices. 6255

Mr. Chamber: I move to strike out the answer.

The Master: Motion denied.

Mr. Chambers: I move to strike it out in so far as he said the company for convenience, etc., which he apparently has no knowledge about.

The Master: Motion denied.

6256 Mr. Chambers: Exception.

Mr. O'Brien: Exception.

Mr. Hayward: Exception.

Q. On Schedule 1, the fourth column represents cubic feet of gas sold?

A. It does.

Q. And what does the second column represent?

A. It represents the amount of such number of cubic feet at the statutory rate.

Q. In dollars and cents?

A. In dollars.

Q. And what is the third column, that of total in
6257 dollars?

A. It is.

Q. From what source did you obtain these figures given in connection with the commercial metered lighting, and what did you do, if anything, to verify those figures? Are they, the figures, in the first instance shown on the ledgers?

A. These figures are obtained from the monthly reports——

Mr. O'Brien: Where did you obtain them, you were asked?

The Witness: Will you kindly wait until I answer.

6258 Mr. Ransom: Just let the witness answer.

The Witness: They are obtained from the monthly reports made by the respective branch offices. Those monthly reports are made up in the branch offices and we have tested the accuracy of them by going back to the original index records made at the time the meters are read by the indexers, and tracing the indexes so read through the respective records made

in the commercial branch offices, into the consumers' accounts, then the summarizing of those consumers' accounts into the monthly reports made by the respective branch offices. 6259

Q. The figures that are shown, then, on this schedule are in the first instance what we may call the book figures; that is, they are identical with the book figures?

Mr. O'Brien: I object to that as incompetent, irrelevant, immaterial, vague and misleading. The book figures do not mean anything.

The Master: I do not have the question clearly in mind. I do not know what Judge Ransom means by book figures. 6260

Q. These are, in the first instance, figures found in the books of the company here in evidence?

A. Yes, they are.

Q. Back of that did you check them to any sources, records, books or documents not in evidence?

A. I did.

Mr. O'Brien: The witness has said he only made tests. Now counsel is trying to lead him. He said he made tests, if your Honor pleases.

The Master: What you mean, Judge Ransom, is this: That the witness tested the accuracy of the operating ledger in so far as it showed the amount of gas sold to the consumers, by an inspection and examination of the supporting reports with the branch offices on which those entries were made, and in turn checking them and testing them by the original 6261

6262 index records of the indexers themselves. Is that correct?

The Witness: We checked every individual branch office report, and I checked the accuracy of those branch office reports by going back to the original records made by the indexers.

The Master: And you found, as I understand it, by testing the records in that way, by gettting the original index reports, through the branch reports, and up to the operating ledger, that the results shown in the operating ledger were correct?

6263 The Witness: They were. I have not the slightest doubt of it.

Mr. Chambers: I move to strike that out.

Mr. O'Brien: That is entering into something more than the scope and method of his examination.

The Master: Yes.

Mr. O'Brien: Then I record here in my objection—or I move to strike out the answer as being a voluntary statement and not responsive.

The Master: I thought it was responsive to my question. I was trying to find out just what the witness did.

6264 Mr. O'Brien: He is trying to give the company another clean bill of health, and we are going to object to that all through the case.

The Master: That is all right.

Mr. O'Brien: This constantly filling up of this record with his O. K.; I am going to intercept every time he gets it out.

The Master: That is what you are here for.

Mr. Chambers: I object on the ground that

it is incompetent for an accountant to draw 6265
the conclusion that he tested the accuracy of certain matters and found them correct. That is for the Court to say. Let him tell us what he did do.

The Master: I am going to let the witness tell to just what extent and in what manner he tested these records, and then if I am satisfied the test was a reasonable one, I am going to take his conclusion that he found as an expert, that the records were correctly transcribed into the ledger.

Mr. O'Brien: Well, he uses another word 6266
that is misleading, your Honor. He is using that word "checked" since he went on the stand. To a court, on appeal, that may have the meaning that he verified it, and I think the witness ought to be asked to give us not technical terms, but terms indicating just what he did. For instance, he said here he checked. That would mean in the cold type of a case on appeal, perhaps, that he had gone back and taken every report of the receipts from the branch offices and compared them with the records in the main office, now in evidence here, and that he had further gone down and 6267
made the comparisons between those records of receipts in the branch offices and the surveys or reports of the meter readers.

The Master: Now, I have got your point, Mr. O'Brien. Let me see, is there an unanswered question?

Mr. Ransom: No.

Mr. O'Brien: It simply saves me the trouble

6268 of making objections and padding the record up. If the witness would use some other term besides the term he is using, "checking", "accuracy", and other terms that seem to carry a conclusion——

The Master: You will not avoid that, because a technical witness will always use technical terms.

Mr. O'Brien: He might as well conform to our wishes and we will get along better.

The Master: He will not, because he has been an accountant for twenty years, and he has ac-
6269 counting terms in his mind and does not have our legal terms in his mind.

Mr. Chambers: If the Master please, why can't the witness tell us what he did.

The Master: That is what I am trying to find out.

Mr. O'Brien: Was this work E. and O. E. Mr. Teele?

Mr. Chambers: I object to this continuous interruption on the part of counsel.

The Master: Objection sustained, and Mr. O'Brien must conform to my rule of one coun-
sel at a time except in special instances when
6270 I permit it to be otherwise.

Mr. Teele, will you tell us just what you did, how you checked the index reports with the branch reports, and in turn checked them with the operating ledger—just what you did and how extensive that check was.

Mr. Ransom: May we go at it from the other end back?

The Master: No, let me get it in my own way now. 6271

Mr. Chambers: May I suggest that he confine it to his personal knowledge.

The Master: He is testifying to what he and his men under him did, to his knowledge.

The Witness: I took about 350 index readings at one of the branch offices. I checked part of them myself and had the rest of the checking done under my supervision by men of my staff. I checked those index reports first to the consumers' ledgers where they were entered against the consumers' account, the consumers' account showing the meter number and the reading of the meter and the consumption for the period, and the cost of that consumption extended at the statutory rate. I then checked those items, or compared them, if you please—— 6272

The Master: The same 350?

The Witness: The same 350, we followed them right through.

By Mr. Ransom:

Q. You are speaking now of commercial meter lighting only?

The Witness: Of commercial meter lighting. We followed them through from the entries made in the consumers' ledger to what is known as the consumption book, wherein is entered the consumption of gas for that particular period. Then the total of the pages of that consumption book are entered upon what is known as a proof ticket, this ticket being for a particular ledger. We then followed the sum- 6273

6274 mary of that proof ticket into the recapitulation of all proof tickets for the month, and the total of that recapitulation of all proof tickets is the report that is sent to the general office monthly, and constitutes the entry by which the accountant at the general office charged the consumers' ledger accounts kept at a particular branch, and credit the sales of gas, the account found on folio 1133.

The Master: That had to do with one branch?

The Witness: That had to do with one branch, and in another branch I took a smaller
6275 number of accounts to see whether the same methods were followed, and whether the accuracy was the same.

The Master: Was it accurate in the first instance?

A. It was.

Q. Did you find any errors?

A. No errors—there were some things which required further data in order to check, like the changing out of a meter where one meter is brought back and another meter is set in its place, and the change ticket which is given to the shop men who do the work provides for the recording on that
6276 change ticket of the reading of the old meter when it is removed and the reading of the new meter when it is set, and the consumption of gas is entered in the consumers' ledger direct from that change ticket, and in that way it varies. Then there are some others that are called scatters.

Mr. O'Brien: Scatters—who calls them scatters, you?

The Master: No, no, Mr. O'Brien.

The Witness: They are readings by the in- 6277
dexers when they have not been able to complete the readings on a route, that is, they have not been able to get access to the premises. When they come back, and their route is not completed, they are given orders to go and read immediately. They go and read the meter, and the charges are made from these so-called scatter tickets.

The Master: How many branches did you check up; two?

Mr. O'Brien: I object to the question as incompetent, irrelevant and immaterial.

The Master: Why? 6278

Mr. O'Brien: The use of the words "check up" again.

The Master: I think it is perfectly clear on the record that when the witness uses the word "check", he uses it in the light of his checking as described, or when the Master uses the word "check", he uses it having in mind the same use of that word.

You did not—to make the record perfectly clear—check every index report for every branch, and compare them with the further record as you have described? 6279

The Witness: I could not do it in more than a year.

Mr. O'Brien: I object and move to strike that out as not responsive.

The Master: Motion granted.

Mr. Ransom: Exception.

The Master: Just to show you how useless that motion is, I will bring it out by my next

6280 question. How long would it take you to do it?

The Witness: As it would take as long as the number of men available to do the work—rather, the time would be governed by the amount of men available to do the work, and it would take practically the same number of men the same length of time that it has taken the company to make the original record.

Mr. Ransom: Practically a year?

Mr. Chambers: No, I suggest that counsel do not put words into his mouth.

The Master: He did not answer.

6281 Mr. O'Brien: I move to strike it out as not responsive.

The Master: Strike what out?

Mr. O'Brien: The answer.

The Master: What answer?

Mr. O'Brien: The answer that it would take practically the same time that it took the company to make the records.

The Master: I will strike that out.

Mr. Ransom: Exception.

Mr. O'Brien: He is not qualified here as the manager of a gas company——

6282 The Master: I have ruled on it.

Assuming that you put fifty competent men at work, give me some idea of the length of time that was required.

Mr. Hayward: What is fifty men to a company that can lose five thousand dollars a day——

The Master: That will give us an idea.

The Witness: I would not undertake at this 6283
time to make an estimate.

The Master: Would it take a long while?

The Witness: It would take a long while.

The Master: Which branch was it that you checked up 350 at?

The Witness: Third avenue branch.

The Master: What is that branch now?

The Witness: Branch 6, 2034 Third avenue.

The Master: In what branch did you make the lesser examination?

The Witness: In the 15th street branch, Branch 2.

By Mr. Ransom: 6284

Q. 132 East 15th street?

A. Yes, sir.

The Master: About how many items did you check in that same way, and by checking I mean, compare with the subsequent records, beginning with the indexers' report—about how many items did you look at?

The Witness: In which case?

The Master: Branch 2.

The Witness: Only three or four. I wanted to get the method followed, and the routine.

The Master: You did not in any sense check 6285
any of the other branhes?

The Witness: Not as to that particular item.

The Master: I am talking about this item.

The Witness: No.

The Master: Did you want to ask a question, Mr. O'Brien, bearing upon this particular point?

Mr. Ransom: I shall object to the continu-

6286 ous policy of breaking up the testimony of a witness on a subject which is very intricate and difficult. It appeared just the same way the other day. There was a constant fire of interjections and comments from counsel, who ought to have refrained until the matter was ready for cross-examination. The result was that questions which were asked, if they were answered, the answer was not noted, objections that were made were not ruled on, and the record was made a very difficult and impossible one from the viewpoint of a case of this sort, involving a matter as intricate as accounting
6287 matters are. I suggest that counsel let the examination proceed, and they will have the witness for full cross-examination.

Mr. O'Brien: You would like that sweet tale put on the record without interruption, wouldn't you?

Mr. Chambers: I challenge what he says. We have the right to make our objection, and I am going to do it as long as I am able to do it.

Mr. O'Brien: Your Honor, I think I am with you on that, it needs no comment.

6288 The Master: I think counsel will all agree that I am trying to direct this trial so that there will be a clean record, and so that there will be no confusion. I am trying in the best way I know to have this case tried in conformity with the rules applicable to the trial of a law suit. Now, here is a question which involves the extent of this witness' examination, leading up to a point which will subsequently

develop. We want to get it as clear as we can 6289
now. Is there any question, Mr. O'Brien, that you want to ask this witness in relation to the extent of the work he did, and only that?

Mr. O'Brien: I don't think I want to do it now, because counsel may have some other questions to put, but in a few minutes I want to go into that line.

The Master: All right, then, don't interrupt now.

Mr. O'Brien: And it will be perfectly proper when I do it.

The Master: Mr. Chambers, do you want to 6290
ask any question of the witness at this point about the extent of his work?

Mr. Chambers: I want to ask a question about a question you asked him. You asked him if he found any errors. He was allowed to tell something, and then he wandered off from the subject. I would like to have you find out what other errors he found besides the one he mentions.

Mr. Ransom: He didn't find any errors.

Mr. Chambers: He said he found some errors, and then he wandered away.

Mr. Ransom: I object to the counsel's state- 6291
ment.

Mr. O'Brien: He did not give us the specification of those errors.

The Master: Make a note of it to go into it on cross-examination. Go ahead, Mr. Ransom?

By Mr. Ransom:

Q. As to the branch office reports in commercial

6292 meter lighting, did you make any examination of all or some of them with reference to the book entries?

A. I made no examination back of the reports coming from the branch offices to the general office.

Q. Except in the instances which you have mentioned?

A. Except in the instances which I mentioned.

Q. Did you examine or check all of the branch office reports?

A. I did.

Mr. O'Brien: I object to that as too vague. He says, "Did you check it?" Now, that
6293 doesn't mean anything. If he says he checked that report with something and names it, then we will know whether to object or not. He is speaking about the monthly reports from the commercial offices.

Q. From the branch office reports to the general office what is the next entry of the contents of that report, so far as commercial meter lighting is concerned?

A. The entry which is made in the journal charging the consumers' ledgers in the respective branch offices and crediting gas sales account.

6294 Q. Is there any further entry made of that?

A. The posting of those entries from the journal to the ledger account.

Q. Now, did you check——

The Master: Say "compare".

Q. Did you compare the journal and ledger entries with all of the branch office reports?

A. I did.

The Master: In other words, am I to under-

stand that you or your men took every branch 6295
office report for the year 1918, and compared them with the journal and ledger entries?

A. We did.

Q. With respect to the municipal lighting, what comparison or check did you make with respect to the items which you found as to that?

A. We compared the reports made by the branch offices to the general office and compared the summary made in the general office with the journal entry made for each month, and compared the entries in the journal with the items entered in the operating ledger.

Q. And you found the journal and ledger items 6296
correct, when compared with the branch office reports?

A. We did. Not the branch office reports, but the general office report dealing with this particular matter.

Mr. O'Brien: Same objection.

The Master: Same ruling.

Mr. Chambers: I think he should be instructed not to answer that conclusion, but to say whether he found them the same or compared them and found them the same. Whether they are correct is for your Honor to say. 6297

The Master: Well, I think that is splitting hairs, Mr. Chambers.

Q. Did you find that the method of recording as o municipal lighting was different in any respect rom that as to commercial metered lighting, and f so in what respect?

A. Only that when the indexes as read originally n the branch offices are transcribed to reports

6298 which are forwarded to the general office and are there entered upon accounts kept with each consumer, or with the municipalities, showing the respective meters in the respective buildings and the reading of the meters and the consumption, which total consumption is aggregated and forms the basis of the entry made monthly in the operating journal.

Q. With respect to the item of prepaid gas, which is also on Schedule 1 as to sales of gas, were the ledger and journal items compared and checked by you with the branch reports, in the manner which
6299 you have testified?

A. They were.

Q. In every instance?

A. In every instance.

Q. And all the branch reports were examined and the items compared?

A. All the branch reports—the prepayment gas is listed on the report coming from the branch, together with the consumers—with the commercial metered lighting?

Q. To what extent did you conduct any checks or tests in the different branch offices with respect to the accuracy and verity of the method of making
6300 up the figures found in the branch office reports?

Mr. O'Brien: In relation to what matter?

Mr. Ransom: In respect to prepaid gas.

A. I took the individual collector's sheets for March 13th, and examined——

The Master: 1918?

The Witness: 1918, and examined the entries recorded on those sheets and the aggregate of each, and checked or compared the ag-

gregate of the consumption and the aggregate 6301
of the amount collected as shown on each collector's sheet for that day with the entry made summarizing the collectors' reports for a month; and I then compared the totals for the month with the recapitulation of sales, on which is entered the total of gas consumed by prepayment meters and the total of the amount collected by the collectors for that given month. That covered the collections from— or the consumption of over 1,700 prepayment meters.

The Master: On that one day? 6302

The Witness: On that one day.

Q. This column "Amount in dollars" on schedule 1, does that show the amount collected in cash, or the amount charged?

A. It shows the amount charged.

Q. Upon this Schedule 1, after you have reached the total gas sales as stated in folio 1133 of the ledger, there is an item of "Less deductions and allowances", with a reference to ledger folio 1079, a deduction in the sum of $720.88. Will you explain that item?

A. That was taken from the——

Mr. O'Brien: Your Honor, of course, will 6303
assume my objection to all these questions on the general ground?

The Master: Yes.

Mr. O'Brien: That the underlying data has not been produced in court, nor the witnesses produced here for cross-examination who made these original entries; on the further ground that the figures that are on this report are

6304 taken from in some cases the eighth, ninth or tenth entry in the records of the company from the original entry?

The Master: Yes.

Mr. O'Brien: And that the witness himself has not checked up the intervening records, the intermediate transcript, intermediate to the original entry made, and the final entry made in the journal or the ledger.

The Master: Yes, I will assume that this entire line of questioning is subject to the objection and give you an exception.

6305 Q. Will you explain that item?

A. It is taken from the account found on operating ledger B, folio 1079, and represents allowances made by the company in the settlement of accounts with consumers on account of slow meters, some of the allowances being made in accordance with directions received from the Public Service Commission, some allowances being made on account of dissatisfied customers and so forth, and the entries that appear in the ledger account have been compared with the entries made in the journal, and the entries in the journal with the original papers upon which such entries are based.

6306 Mr. O'Brien: What page was that on?

The Master: 1079.

The Witness: 1079 of section B.

Q. What is the total number of cubic feet of gas which you found was thus sold by the complainant, commercial metered lighting, municipal lighting and prepaid gas, during the year 1918?

Mr. Chambers: To that I object upon all of the grounds that we have urged heretofore,

as incompetent, irrelevant and immaterial, the 6307
underlying data has not been produced and now he is asking him, this accountant, to tell how much gas they sold, when he knows nothin about it except the figures in the books, and they don't prove how much they sold.

Mr. O'Brien: In addition to that your Honor——

The Master: One minute. Are you through, Mr. Chambers?

Mr. Chambers: Yes, that is my objection.

The Master: Now, Mr. O'Brien.

Mr. O'Brien: In addition to the objection 6308
made by Mr. Chambers, with which I join, I add the further objection that this witness—that this question calls for technical knowledge not only of accountancy but of the whole scheme of measuring gas, regulating the amount of gas that is made in the various branches of the company's works, and the amount which is purchased from other companies, and that so far as we have been able to learn from the statement of Mr. Brundage involves a very complex system which must be properly explained and satisfactorily explained by a technical witness before this witness can 6309
go into that. In other words, the question will assume that he knows the various methods or ways in which gas is lost, and he knows that the scheme for dividing up that loss between the various companies and the percentages that seem to have been used to cover condensation, the percentages used to cover leakage, must be properly shown here, proven by technical wit-

6310 nesses, before this witness can indulge in any answer to that question.

The Master: I don't think, Mr. O'Brien, that you have the purport of the question. The question is not how much gas was made, but how much gas was charged to the consumer.

Mr. Ransom: How much was paid for by consumers, the city and general consumers.

Mr. O'Brien: Let the stenographer read the question.

(The question was read by the stenographer.)

6311 Mr. O'Brien: Well, your Honor, I was wrong in that.

Mr. O'Brien: I was slightly in error on that, but my objection will hold on the ground that the witness does not know how much was sold.

The Master: No, he is testifying from the books.

Mr. O'Brien: He does not know whether they sold wholesale to a lot of other people or not.

Mr. Ransom: I am not asking about that.

Mr. O'Brien: He does not know, only from the books that were turned over to him.

6312 The Master: If I am wrong in permitting him to testify from these books, and the supporting vouchers, without having all of the witnesses here and all of the supporting vouchers here, then I will be wrong in permitting him to answer this question; but to be consistent with my previous rulings, I must permit him to answer this question—over your objection, of course, and with an exception.

Mr. Chambers: The very viciousness of al- 6313
lowing these books in is now apparent.

The Master: Do not argue that again, Mr. Chambers.

Mr. Chambers: I understood you were not going to allow them to take these books and prove from them that they sold so much gas and took in so much money.

The Master: Then you have entirely misunderstood me, Mr. Chambers. I thought I had made myself perfectly clear, to the effect that if this witness as a qualified expert in my judgment, went back to the original records, 6314
to the indexers' reports, to the metered reports, to the original records of sales to the municipality, and found that they supported with reasonable accuracy the books that I permit in evidence, I would permit him to testify to a tabulation or to a result or calculation based upon those records. I thought I made myself clear on that.

Mr. Chambers: He has not done that.

The Master: Yes, he has.

Mr. O'Brien: Bear with me, a minute, your Honor. We have come to a point where it is 6315
absolutely clear that they must put other witnesses on the stand before they can ask the witness this question.

The Master: Why?

Mr. O'Brien: For the reason they have got to show that they made gas, they have got to show the method in which it was measured. We are dealing now not with accounts, we are not dealing with goods sold to the Gas Com-

6316 pany and checked up by the superintendent at the works, or some of his subordinates, but we are going to start here with an assumption that their meters are correct. They have got to prove that. Here we are going from the end to the beginning. It is the old cart before the horse again.

The Master: As I said before, Mr. O'Brien, I do not care whether the cart comes before the horse, or the horse before the cart if I have them both here at one time.

Mr. O'Brien: But the point is, your Honor,
6317 if they are going to prove that they sold a certain amount of gas, that they made a certain amount of gas, then they have got to bring here the men who made it and have got to prove here that they have the proper method of measuring that gas.

Let me illustrate what I have in mind. In some cases they are using old meters. In some cases only recently they have found it necessary to repair them. In some cases they are using, for instance, unreliable meters. We want to know just when these meters were installed, what schemes or methods are adopted
6318 for keeping them in condition, how reliable they may be, and we want to look into the manufacturing book to see if they are reliable.

I want to say for your information in that connection that recently in the case I tried, where we went into the records of the manufacturing book, we found it full of errors. The proportional meter that they had been using to measure the gas to determine the figures,

that they turned into the Public Service Commission, and to use in other directions, we found to be thoroughly unreliable. Now the question is asked of the witness, your Honor, not what the books are shown to have shown. 6319

Mr. Chambers: No, that is the point.

Mr. O'Brien: But he is asked how much gas they make and sell.

Mr. Ransom: I do not ask how much they make. This is a question of revenues and expenses. The first question is, what are the revenues, how many million cubic feet do the meters, every one of which is checked and inspected by the Public Service Commission before it goes out, show? 6320

Mr. O'Brien: That does not give them any sanctity, being inspected by the Public Service Commission.

Mr. Ransom: How much was there checked——

Mr. O'Brien: They were checked in your day, when you were counsel for them.

Mr. Ransom: How much gas does it appear from the consumers' meters has been charged to the consumers, and how much money paid?

The Master: You did not put that in your question. Add to your question one thought, and that is as appears from these books and records that you have prepared how much gas was charged to customers and paid for. The objection is overruled. 6321

Mr. O'Brien: Let me add one sentence before the record is made on this point. What I am driving at here is what I stated to you a few

6322 days ago, and that is if we are going to proceed along in this way, with this method of proof, this case will have been put in without any representative of the gas company going on the stand under oath, where if he makes a misstatement on a matter that is supposed to be within his knowledge we can convict him of perjury. The method is wrong.

The Master: Let me interrupt you. Do you think then that they will have satisfactorily proved what it cost them to make gas? Do you get my point?

6323 Mr. O'Brien: I do not know, your Honor. I do not know what may develop.

The Master: If they do not put on the kind of witness that you have in mind, do you think that they will have satisfactorily proved how much it cost them to make and furnish gas?

Mr. O'Brien: That would depend on how this trial is conducted.

The Master: But, Mr. O'Brien, if as the result of this trial they do not satisfactorily prove it, I do not care how it is conducted, they won't get a finding.

Mr. O'Brien: I am not going to say now what
6324 might result if we were silent here and did not let you know what our views are as we go along.

The Master: I understand your views, Mr. O'Brien, but what I am getting at is this: When you say they have not proved it, the very apparent answer is unless they do they cannot win. I am going in line with my rulings heretofore made to overrule the objections now

made to this question, and will permit the witness to state as a result of his examination of these records and supporting vouchers, in the manner that he has described, how much gas was charged to consumers and paid for. 6325

Q. Well, how much gas was charged to consumers?

Mr. O'Brien: I object to it as indefinite for the reason that it does not include all of the people to whom gas apparently was sold.

The Master: We are going to get to that later. We are taking one classification now.

Mr. O'Brien: If it means gas companies to whom gas was sold we have some new problems presented. 6326

The Master: It does not. It only includes part of their sales.

Mr. O'Brien: It includes the municipality, and they are supposed to be out of this case.

The Master: It includes the private consumers, it includes the Municipality and it includes the prepaid meters. Let us have an answer to that question.

A. 18,029,245,000 cubic feet.

Q. And how much did you find was charged to these consumers for that gas? 6327

A. $14,406,222.47.

Mr. Chambers: Same objection.

The Master: Yes.

Mr. Chambers: Judge Ransom, we cannot get an objection in here edgewise. To that last question he answered before I put it. I object on the same ground, the ruling was the same,

6328 and I took an exception, and I don't know whether the stenographer has it.

The Master: We will see that the stenographer has it. State your objection to the last question.

Mr. Chambers: On the same grounds as heretofore urged to the last previous question.

The Master: Mr. O'Brien joins in that objection, and the Master's ruling is the same. Exception allowed to the defendants, and the answer as given by the witness will stand.

Mr. Chambers: And I take it the objection is deemed timely.

6329 The Master: The objection is timely, yes.

Q. And did you compute the average price per thousand cubic feet received by the complainant company for gas so sold to consumers in the category of commercial metered lighting, paid gas and municipal lighting?

The Master: Your last two questions had relation to charges; not to payments. Do you mean payments?

Mr. Ransom: I mean charges.

The Master: What was the average price charged?

6330 Mr. O'Brien: Your Honor, I object to it on the general grounds, that it is incompetent, irrelevant, immaterial; further that it is vague, because we do not know what he means by "average".

The Master: In that you are correct.

Mr. O'Brien: Whether it is a weighted average would be a very important thing.

The Master: In that you are correct.

By the Master: 6331

Q. As I understand it, Mr. Teele, the consumers generally, other than the municipality, were charged at the statutory rate of eighty cents?

A. They were.

Q. And the municipality was charged at the rate of 75 cents?

A. They were.

Q. Which, as I understand it, is the statutory rate?

A. It is.

Q. The average to which Mr. Ransom referred is the average of all gas, taking in part 80 cents and 6332 in part 75?

A. The total cubic feet divided into the total amount gives the average.

Mr. O'Brien: I object to it on the ground that the city was not made a party to this case, and that when the city was omitted as a party defendant, it was stated they were not going to include the municipality in any way in this case.

The Master: I am going to sustain this objection on the ground that we have nothing to do with that 75 cent rate, as I understand it.

Mr. Ransom: We have got to show our rev- 6333 enue. It is, of course, true that we are not asking for any relief against the 75 cent rate.

The Master: You show the revenue when you show the amount charged. You have shown it. When you have shown by this witness, as you have, that you charged eighteen billion odd cubic feet, and that you were paid, or you charged $14,406,222.47, anybody can compute the average if an average is necessary.

6334 I am not going to permit the question, because I do not think an average is necessary. All I want to know is how much you were charged for the gas made.

Mr. Ransom: Exception.

Mr. Chambers: May I say that they have not made the city a party, have not tested the 75 cent rate throughout the case. They are satisfied to sell to the city at 75 cents, and your Honor must throughout this trial concede that they can furnish the gas to the city at 75 cents.

6335 Mr. Ransom: I want to say a word on that.

Mr. Chambers: They do not say that statute is unconstitutional.

The Master: I am going to answer you, Mr. Chambers, and I do not think you need say anything. There is no presumption to be drawn from the fact that they do not attack the 75 cent rate to the city, except the amount furnished, the amount involved, was not worth attacking. That is all there is to it.

Mr. O'Brien: This is a very important matter, your Honor.

6336 Mr. Ransom: This is a matter that has been passed on by a number of courts, where the sale to the municipality is negligible in quantity, and it comes under the category of a separate statute enacted under the circumstances that the statute fixing the rate for the municipality of the City of New York was fixed, and the courts have held that attack upon it in the first instance would not be well founded, even if the

attack on the 80 cent rate would not be well 6337
founded.

Mr. O'Brien: What is the conclusion on that? I want to be heard if counsel is through.

The Master: On what point?

Mr. O'Brien: On that matter.

The Master: On what matter?

Mr. O'Brien: The court has made some observation here with regard to the municipality. I insist that the city not having been made a party, no item of expense or revenue can be included in this case, that they have to excise that part or everything that relates to the city 6338
from this case.

Mr. Ransom: Do you want to cut this item out of the revenue schedule?

Mr. O'Brien: Yes, we will cut it out, and the expense of making it, out of the case.

The Master: No, I will not hear any more on it, Mr. O'Brien.

Mr. O'Brien: Will you hear me on this. I am going to protect the city against a possible finding here on the making of gas. I always took the position that the Circuit Court of Appeals was in error and the District Court was in error when they made that ruling 6339
keeping the city out of the case. One of the reasons, and a big reason, a powerful and forceful reason, was that there would be danger for the city in the conduct of a trial in which findings would be made generally as to the cost to this company of making gas. In other words, that the interests of the city would be jeopardized if they were

6340 not allowed to go into the case, where at the conclusion of the trial a finding was to be made as to how much it costs to make gas. Not for any particular person but for any consumer. In other words that might be used against the city as a measure of the cost of making gas. They having eliminated the city from this case, must excise from the case here all the way through not only the revenues received from the sales to the city but the cost of making the gas which the city bought.

The Master: I do not think there is any-
6341 thing that calls for a ruling at this time. I am going to ask the witness, however, to state the total amount of cubic feet under the title "Commercial metered lighting" at 80 cents, account 436, for the year 1915.

The Witness: 14,803,530,500.

The Master: Representing how much money?

The Witness: $11,842,824.40.

The Master: That is at the rate of 80 cents.

The Witness: That is at the rate of 80 cents.

The Master: Municipal lighting, account 431, at 75 cents. There was furnished how much in total and was charged how much?

6342 Mr. Chambers: The same objection.

Mr. O'Brien: The same objection.

Mr. Chambers: On the ground that it should be eliminated.

The Master: Yes. I am putting it on record so that if anything comes up later as to the elimination of the items, we will have it.

The Witness: 117,454,600.

The Master: And how much money?

The Witness: $88,090.98. 6343

The Master: Prepaid gas, account 435?

The Witness: 3,108,259,900.

The Master: That is charged at 80 cents, is it?

The Witness: The charge is at 80 cents, but the company does not collect 80 cents, because they find in the meters——

Mr. Chambers: I object to that.

Mr. Ransom: Let him explain what it is.

Mr. O'Brien: He can show a variation from the charged amount and the amount actually received.

6344

The Master: This prepaid gas comes from automatic meters?

The Witness: It does.

The Master: In the nature of slot machines?

The Witness: It does.

The Master: You understand these machines have been set at an 80 cent price?

The Witness: Yes.

The Master: They do not always work out or result that way, is that your point?

The Witness: They sometimes take out of the machine plugs, foreign money which has to be sold at a discount. 6345

Mr. O'Brien: Did you ever see it taken out, Mr. Teele?

The Witness: I have not.

The Master: That is why I asked you what I did, Mr. Teele. The result does not show 80 cents coming from those meters?

The Witness: Quite right.

6346 The Master: The result of that other people may give us.

Mr. O'Brien: Right here, your Honor, let me interject a question. Have you taken into account the amount of money that is required to be deposited before they put in one of these prepaid meters?

The Witness: I do not understand your question, Mr. O'Brien.

Mr. O'Brien: Do you know whether they charge or the company requires a deposit to be made, a guarantee?

The Witness: On prepayment meters?

6347 Mr. O'Brien: Yes.

Mr. Witness: No, I do not.

Mr. O'Brien: You do not know that?

The Witness: No.

Mr. O'Brien: You did not go into that account?

The Witness: I did not.

Mr. Chambers: That makes good the plugs and everything else.

The Master: I do not think they take any prepayment on these meters.

Mr. O'Brien: Yes, your Honor, you have to

6348 put up two dollars before you get one in.

The Master: What is the total amount received under title 435 for the year 1918?

The Witness: $2,476,027.97.

The Master: The total of those three subdivisions is how much?

The Witness: $14,406,943.35.

The Master: From that comes the deductions

and allowances referred to at folio 1079, 6349
$728.88?

The Witness: Right.

The Master: That gives the figure you gave before of $14,406,222.47?

The Witness: It does.

The Master: As representing the total amount received for the 18,029,245,000 cubic feet of gas?

The Witness: It does.

The Master: The average can be figured out by any accountant?

The Witness: Yes, sir.

6350

By Mr. Ransom:

Q. With respect to the matter of foreign coins and lead slugs and the like which are sometimes found in prepayment meters, is there any separate account maintained by the company which you have examined as to the proceeds of such collections?

Mr. Chambers: I object to that.

The Master: I won't permit the question in that form, Judge Ransom. I will permit you to ask the witness whether there is an account referring to the sale of bad coins and other things, without saying where they come from, 6351
because he does not know.

Q. Is there an account in reference to the sale of bad coins and the like?

A. I do not think there is any sale of bad coins. Foreign coins found in the meters are turned into the cashier's department, and the cashier's department sells them.

The Master: Is there an account?

Q. Is there an adjustment made by an account?

6352 A. There is an adjustment. I am just trying to recall what it is.

Mr. O'Brien: Bad money account?

The Witness: No, not a bad money account.

Q. Is it shown upon one of the schedules to which we will later refer here?

A. It is.

Mr. Ransom: We will take it up then

Mr. Chambers: Every consumer who has a slot machine has to sign a written guaranty that he will make good.

Mr. Ransom: I object to that testimony, Mr. Chambers.

6353 Mr. Chambers: You have brought out the other and that does not appear.

The Witness: I think it will be found at folio 1070.

Q. On Schedule 10-A?

A. On Schedule 10-A.

Q. What is the name of the account?

A. Summary of undistributed adjustment. It is at ledger folio 1070.

Q. Are you looking at Schedule 10-A?

A. I am looking at Schedule 10-A and the item is "Proceeds from foreign and mutilated claims re-
6354 ceived in prepayment meters", and amounts to $5,666.25.

Q. Less than one per cent. of the total. Now, turning to Schedule 2——

Mr. O'Brien: We are still on the method or scope of the paper?

The Master: For the time being, not alone the scope of the paper, but we have testimony to a fact over your objection and ruling.

Mr. O'Brien: But, your Honor, before we 6355
are going to receive anything of that kind, I want the privilege of examining the witness before framing my objection.

The Master: No, I have permitted the witness to state what these books show as to total amount of gas charged to consumers.

Mr. O'Brien: I understood a few minutes ago that you asked me if I had any questions to ask, and I told you I would reserve them for a few minutes, until the time came?

The Master: Yes.

Mr. O'Brien: I understood counsel was still 6356
examining his as to the method of this statement, the way it was gotten up, and that when he came to offer the paper in evidence, that then we would have the privilege of examining the witness as to just how he got up that paper and how far he went.

Mr. Ransom: If the Court please, I have not yet offered the paper.

Mr. O'Brien: It is a question where the transition is coming here from questions that relate merely to the method of getting up the paper and questions as to the substance of the paper. I want to be heard after that, and to 6357
cross-examine the witness as to the method by which he arrived at these figures prior to making my objection to the offer.

The Master: I think Mr. O'Brien's objection has force. By these last few questions that I allowed you are practically proving the contents of the paper. I think you had better exhaust the methods of the witness in prepar-

6358 ing the document, and then Mr. O'Brien may ask any questions that he wants to ask.

By Mr. Ransom:

Q. Mr. Teele, referring to Schedule 2, "Rents from Gas Appliances, 1918," ledger folio 1138, uniform system of account No. 440, are the rents from gas appliances reported to the general office by branch offices?

Mr. O'Brien: Wait a minute. I want to record here my objection to the question as incompetent, irrelevant and immaterial. The question of the receipts and expenditures of

6359 gas appliances is not a part of this case. I object on the ground that it is extraneous to the gas business, that they cannot throw upon the consumers of the complainant company the cost of maintaining this elaborate system of appliances. It must be entirely separated from this case. In this connection let me say to your Honor that when we come in the conduct of this case to point out to your Honor through proofs that this complainant company is making $19,000 a day through its sale of electricity, we will be met with the statement that you cannot ask a gas company doing an electric light business

6360 to recoup the losses of the gas end of their business by the profits of the electric light end of it. Now, that same rule will apply to gas appliances, will apply to loans made to gas companies subsidiary or not subsidiary to the complainant company; it will apply to moneys turned into a restaurant and kitchen in the 15th Street office building, or any other extraneous matters in which they may have used the

consumers' moneys. Now we are approaching 6361
that practically for the first time, the question of appliances, and we might as well battle this out here. It has no place in this case, and it is further objectionable, your Honor, for the reason that so far as appears from the papers that they have given us, they have not separated from the cost of making gas, the cost of conducting the gas business, the cost of these appliances, so that we cannot say, unless they set up an entirely separate system of accounts, we cannot say whether there has been a profit or loss in the gas appliance business. 6362

Mr. Ransom: May I just say a word on that?

The Master: No.

Mr. Chambers: I want to make an objection.

The Master: Mr. Chambers, you may make your objection.

Mr. Chambers: I object to it on the further ground that it is incompetent, and this witness obviously knows nothing about whether the branch offices report to the main office except that he finds some paper there; and, it calls for a conclusion as to whether they do report. We are entitled to have the best evidence on that. 6363

The Master: Judge Ransom is now bringing out—and I am going to confine him to that—the foundation testimony for the offering of this tabulation.

Mr. O'Brien: Is your Honor going to——

The Master: One minute, please, let me say something so far as these questions raised by Mr. O'Brien are concerned, I am not going to

6364 exclude evidence tending to prove those facts, or to pass upon that branch of this case now. I am going to take all of this evidence. I do not know enough about this case yet to be able to say, nor have I made a close enough study of it to be able to rule upon the points presented. Offhand, I wonder what the sale of appliances has to do with the cost of making gas or of furnishing gas; but I do not know, and I am not going to interrupt the trial for the purpose of disposing of this question. I am going to take the proof, because if Judge
6365 Ransom is correct—and he must have made a study of it, and it must be assumed that he is correct, otherwise he would not be wasting our time—or he would not be using our time——

Mr. O'Brien: I do not follow your Honor's assumptions or presumptions in regard to counsel for the complainant.

The Master: I am going to take that, Mr. O'Brien, because if you are correct that these items must be excluded, I can exclude them without doing any harm. If I exclude them now I may be doing serious injury.

6366 Mr. O'Brien: Now, your Honor, what I was trying to drive at was this, in the Minnesota Rate cases the United States Supreme Court made a ruling that may guide us here. I have referred to it already. They threw that case out of court because of the doubts that were created and one of those doubts and one of those unproved, uncertain elements in the case was a question of interstate business done by

the company in question. The company had 6367
not presented to the court separate accounts which would show separated the moneys spent and the receipts from their interstate business separated from their intrastate business, and they said, "Well, we did not keep our accounts that way." The Court said, "You should have kept them that way, you should have had separate accounts, and that should have been done." Meaning that they practically or substantially declared it was inexcusable, and so on, and the result of that was that that case was thrown out of court. Now we are pre- 6368
sented here with receipts for appliances, and they will later come along and say we are giving you the benefit of the revenues from this business, but they have not set up in their accounts all of the elements of cost that enter into them, the inventories, or rather the invoices for the cost of the arrangements and the various appliances that they sold won't spell out all the costs, and we have got to have separate, if they want that element considered here at all, the hundred and one different items of expense that go into it.

The Master: How do you and I know what 6369
they are going to prove?

Mr. O'Brien: Well, they have presented us what is supposed to be advance copies of their schedules.

Mr. Ransom: May I say just a word upon that point?

The Master: If you think it is necessary.

Mr. Ransom: I do. Account No. 440 of the

6370 Uniform System of Accounts for Gas Corporations requires this company to credit to this account all revenues derived from the letting of gas engines, heating appliances, and other gas apparatus and appliances except meters to other than municipal corporations. I do not think that it is advisable to try at this point to argue out the merits of the legal questions, I think it is advisable to present the facts and then pass upon the question when it comes to bridging questions of law. I can only say perhaps that as to the issue raised by Mr. O'Brien with respect to the Minnesota rate
6371 case, that the same judge who wrote the opinion in the Minnesota rate case later when he came to sit as a referee in a judicial capacity in a gas rate case, followed the inclusion of those rents and of expenses.

Mr. O'Brien: Yes, that is a case where you represented——

The Master: Never mind that now, Mr. O'Brien.

Mr. O'Brien: Just a minute, your Honor. We might as well go into that. You can't pass that over on me.

6372 The Master: You don't want to be interrupted, and you don't want to be interfered with.

Mr. O'Brien: Well, if he will only give us some signal when he comes to a period, he takes one of those long breathing spells and you can't tell whether he is finished or not.

The Master: You have got to stop. I am trying to be fair to all counsel, but you do

interrupt more than you ought to and you have 6373
got to stop.

Mr. Ransom: Now I respectfully suggest one thing. If Mr. O'Brien has any disagreement with the Court on the questions of law which your Honor says a contrary course should be pursued, we will meet him on that, but the present objection as to the gas appliances and the expenses of gas appliances, we shall expect to present an orderly course of proof——

The Master: There is entirely too much of this speech making throughout this case, and I won't hear another word, Mr. O'Brien.

6374

Mr. O'Brien: Well, your Honor——

The Master: I won't hear another word about it. This will have to stop.

Mr. O'Brien: This is a momentous question, this cannot be passed over lightly.

The Master: No, it is not momentous.

Mr. O'Brien: This invoices many thousands of dollars here.

The Master: When the time comes we will hear that out.

Mr. O'Brien: Well, I submit the time is here now, before we are required to spend any more time on this item, which takes up more of 6375
this entire book than any other single item.

The Master: I will take the proof offered now, with an exception to counsel. I just want the objection stated and I will not have these speeches every time. We waste too much time on it.

Mr. Ransom: Do you recall the question, Mr. Teele?

6376 The Master: What did you do with reference to comparing or examining accounts showing the amount of revenue from gas appliances 1918, title 140, uniform accounts.

The Witness: I compared the entries in ledger folio 1138 with the monthly reports rendered by the branch offices.

Q. All of the reports of all of the branches?

A. All of the monthly reports from all the branch offices. And I compared—I will put it another way. I compared the entries in folio 738 with the entries in the journal from which such entries had been posted into the ledger, and I have compared
6377 the entries occurring in the account of rents from gas appliances, suspense, with the reports made from the monthly branch offices, and I have compared the entries made in the branch offices with the reports made to the general office monthly, and I have gone back to original contracts, or rental charges made and entered upon the consumers' ledger, and abstracted or taken from the consumers' ledger and summarized in the consumption book, and from there carried to the total of their proved tickets and embodied in their monthly report to the general office.

6378 The Master: What is the first record of any kind that is kept as to the rental of appliances?

The Witness: Upon the installation of an appliance for which a rental is charged, a contract is signed.

The Master: That is the very first paper.

The Witness: That is the initial paper.

The Master: Did you look at that?

The Witness: I did.

The Master: To what extent? 6379

The Witness: I looked at them in both the 15th Street office and at Branch 6, No. 2084 Third Avenue.

The Master: To what extent?

The Witness: Three or four contracts in the 15th street office and several contracts in the Third avenue office.

Q. And you followed those contracts and charges made thereon right through the ledger?

A. I did.

Mr. O'Brien: Did you say several, Mr. Teele?

The Witness: Several. 6380

The Master: And as a result of that did you find any error in carrying items from one book into another and from one record into another?

The Witness: I did not.

Q. From your examination of these books and records to which you have referred, have you set forth in this Schedule 2, all of the rents shown to have been received from gas appliances?

A. Yes.

Q. With respect to Schedule 3, Gas Residuals produced 1918, is there any corresponding Public Service Commission account number?

Mr. O'Brien: Same objection, your Honor, 6381 and I want to say that I object to this constantly bringing in of the uniform system of accounts. I don't think it ought to be interspersed with this case, because it does not bolster up the case to have a reference made to it.

The Master: Don't you see, Mr. O'Brien, that you add nothing to the point of your objection?

6382 I understand it perfectly when you say you object to the question upon the ground that the uniform system of accounts required by the Public Service Commission must not be taken as an element in this case. That question has been raised a dozen times in a dozen different forms, and I am going to allow the question over your objection, overruling your objection, and allowing an exception, upon the ground that in so far as the accounts are kept in conformity with the Public Service Commission rules and regulations, and they are shown to
6383 be correct, and they tend to show how much it costs them to make gas, I am going to take it. I do not agree with Judge Ransom that because the uniform system of accounts requires an account of rentals from gas appliances, that necessarily I must hold that that is an element to be considered here, but I am taking it now, irrespective of the ruling of the Public Service Commission that account may be kept, or may be a proper item. I overrule your objection and allow an exception, and in any of these cases where you bring up the same point, it is simply referred to the fact that your objection
6384 is based on the ruling already made by me with reference to the uniform system of accounts, and we don't have to argue about it.

Mr. Ransom: Will you answer the question?

The Master: Is there any account number in the uniform system of accounts for this?

The Witness: There is no account number under the uniform system of accounts that provides for crediting gas residuals produced.

Account No. 442 provides for crediting gas residuals sold, but the Consolidated Gas Company in their accounts provide for recording gas residuals produced. They go beyond what is called for in the uniform system of accounts. 6385

Q. And this paper shows residuals and by-products produced, whether sold or not?

A. Yes.

Q. In this schedule did you separately set forth the account of gas residuals produced?

A. I have.

The Master: Where did you get those figures from; where did you get them? 6386

The Witness: They appear on the operating ledger, on the folios indicated on the left side of this sheet; it appears upon folio 1149, and the general caption of 14th Street Station, and under the sub-caption of Coke, appears the amount of eight thousand——

The Master: No, don't give me the amount; my question is what analysis did you make of those figures?

The Witness: These figures have been compared with the monthly reports, or rather, first with the entries upon the operating journal, and from the operating journal the entries in 6387 the operating journal have been compared with the monthly reports of the superintendents of the respective stations.

The Master: And what is his report based upon?

The Witness: His report is based upon the manufacturing report or manufacturing record kept at the stations in which is entered the

6388 daily record of the residuals produced and the daily record of residuals produced is kept so that it shows an hourly record.

The Master: Did you go back to those records?

The Witness: I went back to those records in the case of the 99th Street station.

The Master: What did you do?

The Witness: I compared those daily records of the 99th Street station with the manufacturing record kept at that station. In the case of the gas tar, I compared the entries in the tar

6389 man's book with the daily record.

Q. What did you find?

A. I found that they were substantially in agreement.

Mr. Chambers: I move to strike out "they were substantially in agreement".

The Master: I will hear what he has to say in explanation.

Mr. O'Brien: He is going to add something after we have objected?

The Master: Yes. I will let him say what he means by substantial agreement.

The Witness: The tar man's book is made

6390 up—is a record made at the station by measuring the tanks and the measurement of the tanks——

Mr. O'Brien: What tanks, please?

The Witness: The tar tanks. The tar tanks when measured may not always contain all tar. They may have a quantity of water in them, and until they are inspected or they undertake to use the tar, they don't know what water con-

tent there may be, and having measured and 6391
reported the quantity of tar that is in that tank, they may have to take the water out of it.

Mr. O'Brien: I move to strike out all of the witness' answer beginning with the sentence in which he refers to the tank not always containing tar. He is lapsing into something there that is a technical matter not within the scope of his qualifications, even assuming that he is qualified as an expert accountant.

The Master: I think Mr. O'Brien is right about it, but having in mind what we are trying to get from this witness, I will let the answer 6392
stand and ask the witness this question: Are there any records, cross records, as against the amount reported in the tank?

The Witness: No, your Honor. The record which is regarded as the reliable record at the station, is the daily record made under the supervision of the superintendent.

Mr. O'Brien: I move to strike out "the record which is held to be the reliable record", that is purely hearsay.

Mr. Ransom: I think perhaps I can connect some of these things up by further proof.

Mr. O'Brien: I know, but he is indulging in 6393
these conclusions right along.

The Master: I think some of these statements are incompetent.

Mr. Ransom: If unsupported, they will be inconclusive.

Mr. O'Brien: We can't have the record filled with these kind of observations from day to day.

6394 Mr. Ransom: You can't prove two witnesses at once.

The Master: If you men will stop talking for a minute, I will try to straighten this out. Are these figures that you have got on this Schedule 3 based upon the daily sheets so-called, or the tar tank records?

The Witness: The records on this sheet are the records compiled from the signed monthly reports from the manufacturing stations.

The Master: Which are based on what?

The Witness: Upon the manufacturing records kept at the station.

6395 Mr. O'Brien: That is the thick book, I suppose?

The Witness: Yes. (Continuing) which manufacturing record kept at the station is written up from day to day from the daily record which is kept.

The Master: I shall receive the testimony, Mr. O'Brien, again referring to the point that is always in my mind, that this proof may not be entirely satisfactory, and that counsel for the complainant had better have in mind the fact that this proof may not be entirely satis-

6396 factory.

Mr. Ransom: I have had that in mind for several months.

The Master: All right.

Mr. Ransom: We expect, of course, on these things as I have indicated many times ——

The Master: Well, let us get to the next sheet.

Q. These figures in the first, second and third columns, are they in dollars or what? 6397

A. In dollars.

Q. Is there any account in the uniform system of accounts for expenses incurred in the production of residuals?

A. Yes.

Mr. O'Brien: The same objection, your Honor.

The Master: Same ruling.

Q. What is that account number?

A. Account G 827 provides for the charging of residual expense. I would like to add that on that original schedule, if you don't mind. It was omitted originally. 6398

The Master: What is 827?

The Witness: That is ledger folio.

By Mr. Ransom:

Q. In the case of residuals sold, at what value or price are they shown as sold?

The Master: Does this schedule show residuals sold?

A. This is gas residuals produced. They are valued at what has been realized for the units sold during the year.

Q. That is, this shows the entire quantity produced? 6399

A. The entire value produced.

Mr. O'Brien: Your Honor, we are dealing now in technical terms again, and I am going to object. All the way through here we have these terms which carry legal conclusions. Now, the witness could use other language. He knows the English language well enough

6400 to use a simple term that does not carry a legal conclusion. I object to the word "value". They can indulge in other terms in order to explain the method by which a certain quantity of residuals is reflected in terms of money in their books.

Q. Not all of the residuals produced were sold, is that correct?

A. That is correct.

Mr. Chambers: I move to strike that out. How does he know that they did not sell all of their residuals?

6401 Mr. Ransom: The books and records show it.

Mr. O'Brien: No, they don't show it at all.

Mr. Chambers: Why must we sit here and have proof of something that obviously the witness knows nothing about? He asked him point blank if they sold all of their residuals. That is a pretty important question.

Mr. O'Brien: May I say here that this is not for the purpose of prolonging the discussion, but what I am objecting to is this: Counsel may go on using this method of proof all the while, skeletonizing a system of evidence here that may be covered by no other witness.

6402 We are approaching something here that is important in this case, and that is how they credit on their books residuals, at what price they put them in, and the system by which reports are made upon them before they finally get into their resting place in the final books of account. The thing I object to is the use of these terms. He is bringing out the fact that there is a credit or a debit made on the

books on account of residuals. Now, he should 6403
ask him that without asking things that are manifestly beyond the experience and qualifications of the witness.

The Master: Let me ask a question. There is an account "residuals sold"?

The Witness: There are five accounts. There is an account on folio 1149 called, "Gas production residuals produced, 14th Street station." There is at ledger folio 1150 an account called "Gas production residuals produced, 42nd Street station." There is another at ledger folio 1151, an account called "Gas pro- 6404
duction residuals produced, 21st Street station." At folio 1152 there is an account, "Gas production residuals produced, 99th Street station." And at folio 1065 there is an account "Residual Expenses".

By Mr. Ransom:

Q. At each of the stations?

A. Yes, sir.

By the Master:

Q. What I am getting at is is there an account showing residuals sold?

A. There is an account in which the residuals are shown. 6405

Q. What account is that?

A. That is the respective stock accounts into which the residuals produced are carried on one side, and are here credited on the other side.

Q. Does that account show whether all the residuals produced during the year were sold?

A. It shows they were not all sold.

Q. But it shows one way or the other?

6406 A. It shows they were not all sold.

Q. Are these residuals sold from time to time at varying prices?

A. They are sold at varying prices.

Q. What price is this that you have got opposite these items?

Mr. Chambers: I object to that as incompetent.

The Master: I am asking about what the books show.

A. The price here shown is the average price for the year.

6407 Q. Who averaged that?

A. I did, by an examination of the record of sales.

Q. And the amount received for that merchandise——

A. Is credited to the stock account.

Q. You compared the amount of sales with the amount of money received and strike an average of the amount received during the year for the various items?

A. Yes. There is very little difference.

Q. What do you mean by saying that there is very little difference?

A. Very little difference in the prices realized.

6408 Q. During the year?

A. During the year.

Q. On any particular item?

A. On any particular item.

Q. Of course the price for drip oil is different from the price of coal?

A. Yes, entirely different.

Q. Your statement is that the books of record of the company that I have received in evidence,

and the supporting vouchers and records show that 6409
coke, for instance, during the year 1918, varied little in price?

A. Very little variation in price.

Q. And drip oil?

A. The same way with drip oil.

Q. So that the amount set opposite these various items are substantially the amount at which they were sold during the year?

Mr. Ransom: In so far as they were sold.

The Master: Yes.

Mr. Chambers: As shown by the books only. He doesn't know if they sold a nickel's worth 6410
of toluol, for instance.

The Master: Of course he does not. This examination is entirely with reference to what examination he made of the books.

Q. Now, this residual expense, what did that consist of?

A. Ledger charges and charges for labor, and cartage in the handling of the residuals after they were produced.

Q. How did you arrive at that?

A. By comparing the items in the ledger account with the pay roll items, or with the original vouchers charged against the account. 6411

Q. Did you go into the time books?

A. In the case of the 99th Street station. That is a station in which I tested a full month's pay roll.

By Mr. Ransom:

Q. Turning to Schedule No. 4, "Gross profits from sale of gas appliances, 1918", ledger folio 1148, uniform system of accounts No. 441, will you describe just how that was made up, and what you

6412 did to verify and check the accuracy of the entries in the ledger or journals?

Mr. O'Brien: I make the same objection. We are indulging in the same objectionable terms here, "verifying accuracy", and "checking up".

The Master: Same ruling and exception.

A. I compared—this schedule is made from the amount, $214,517.38 appearing on ledger folio 1148 of the operating ledger.

Q. How was that analyzed and checked?

A. The account itself was analyzed and the re-
6413 sults stated here are the result of tracing the entries made in this account back to the operating journal, and from the operating journal, to the account to which the items relate on the other side. That is, this account represents the balance transferred from another account, the other account being gas appliances, in which is kept, under headings of the branches named, the transactions, the inventory, purchases and sales, and transfer of appliances between sales rooms and repair shops, in the same manner that an ordinary merchandise trading account would be kept.

Mr. O'Brien: I move to strike that out first
6414 as being not responsive; secondly, as giving a conclusion that he has not shown himself qualified to give; thirdly, as involving records, papers and accounts that he has not investigated; fourth, as giving legal conclusions, by his comparison of the method adopted by this company with what ordinary business men have done. I think, your Honor, the witness should be cautioned to give us a clear answer

to a question without indulging in this general 6415
dicta about methods, and giving us conclusions of law. He knows enough about the trial of a case to refrain from giving us such statements.

Mr. Ransom: He is commenting really upon accounting matters in connection with questions asked.

Mr. O'Brien: Another objection that I would make to the question is this: In the first place we are getting a misleading and confused record. He says, "I" when he means "we", and if it is what Teele and his subordinates have 6416
done it should be shown that way in the record, because there may be excerpts taken from this record on appeal that will be misleading, and the witness will be pictured as saying, "I traced this account to the underlying data", and the conclusion from that excerpt would be that he had taken every account of this kind and traced it to its orginal source. If he has made tests I think he can tell the method by which he made them and tell us the scope of the test. If it is only a limited test he can have it. The comparison with other business methods is plainly not called for by the question. 6417

By the Master:

Q. What records are kept in the branch offices with respect to the sale of gas appliances?

A. There is a sale record kept by the branch offices regarding the sales of gas appliances.

Q. Does it show what was paid for the various appliances?

A. Paid by the company?

6418 Q. Yes.

A. It does not; it shows what the customer paid.

Q. How can you tell what the gross profit was if you don't know what the company paid for it?

A. The gross profit has been determined in the following manner, if I may describe it.

Mr. O'Brien: Your Honor, I object to the use of the term "profit". The witness proceeds now to say that the gross profit is obtained in the following manner. That carries the assumption that there is a profit.

The Master: It will not carry anything with it.

6419 Mr. O'Brien: That remains to be proven.

The Master: I will try to find out what all this means here.

Q. Tell us what you mean?

A. The account starts with the inventory of appliances on hand, at a value.

Q. Not necessarily cost?

A. Not necessarily the cost.

Q. Why not?

A. The appliances are inventoried at their current market value, the cost to the company.

Q. Who makes up the inventory, do you know?

6420 A. The inventory is made up by the clerk handling the various transfer papers, or the records in the branch offices.

Q. Then, as I understand it, this inventory shows all the various appliances at prices specified?

A. At prices specified.

Mr. Ransom: Current prices.

Mr. Chambers: What does he mean by current prices?

The Master: He didn't say current prices. 6421

Mr. Chambers: Counsel did.

The Master: I limited the question to prices specified, because I felt that he did not know the price fixed, whether it was cost or market value.

Q. Am I correct about that?

A. That is right.

By Mr. O'Brien:

Q. Do you know the market value, Mr. Teele?

The Master: He said he did not.

Mr. Ransom: I object to the interruption of counsel. 6422

The Master: All this witness knows is that he finds an inventory of merchandise on hand at the beginning of the year, with specified prices against them.

The Witness: That is right.

The Master: Which may or may not be cost or market value, or more or less.

The Witness: That is right.

Q. Is this inventory at the branch offices?

Mr. Ransom: I object to this interruption of counsel.

Mr. O'Brien: I am asking counsel.

By the Master: 6423

Q. These inventory books are kept at the branch offices?

A. The inventory books are kept there.

Q. And through the year sales are made of these appliances?

A. Yes, sir.

Q. And purchases are made?

A. Yes, sir.

6424 Q. And all that these figures show is that the result of that operation during the year is that, charging the account with merchandise that came in, and crediting the account with merchandise that went out at prices at which it was sold, there is this apparent profit?

A. There is an apparent gross profit in favor of the account.

Q. What did you do with reference to analyzing the prices at which they were sold? Is there any record to show the sales made, and the dates when they were made, and the prices at which they were
6425 made?

A. Yes, there is a sales book.

Q. Did you look at that?

A. I did, and the total of these sales is carried into a report made, a report made monthly by the respective branches to the general office.

The Master: Well, here again you see, Mr. O'Brien, I am going to take it as showing what it shows, and no more.

Mr. O'Brien: Will your Honor hear me on that now?

The Master: Yes.

Mr. Ransom: We have not offered this at
6426 this time.

The Master: Well, I will hear what Mr. O'Brien has in mind.

Mr. O'Brien: What I want to emphasize your Honor is, this, that there is so much that is left undeveloped and unsold, that it is entirely improper, even though these were admissible in the end, that it should not be put

in here. What is to be the explanation of the 6427
whole method by which they rent appliances?

The Master: These are sales.

Mr. O'Brien: But he speaks about making an inventory.

The Master: These are sales, Mr. O'Brien. We are on Schedule 4, "Gross profits on the sale of gas appliances".

Mr. O'Brien: Ours haven't got that number.

Mr. Ransom: At the time this was drawn up they had not been put into schedule form.

The Master: The title is, "Gross profits on sale of gas appliances".

6428

Mr. O'Brien: Well, part of my argument will not apply to that. However, here is a situation where we have got to have developed, where we have to have proved, an inventory of the amount on hand. A statement in a general book of the company that they have so much property on hand, expressed in terms of dollars, will not suffice.

The Master: But he said there was an inventory.

Mr. O'Brien: He says that, your Honor, but that has got to be proven. Now, this is not a case that comes within your ruling already 6429
made that you are going to accept general books because they have been properly traced to books of original entry. We have here an inventory, and I submit that you have got to show by a witness swearing oath that they had a certain amount of property on hand, that it was surveyed and inventoried the 1st of January, 1918, and the condition of it. Now, the

6430 prices that they have charged up in their books for them, we have got to know that. We want to know what they have added to the invoice price. If the goods shown for the record in 1918 were purchased back in 1914, or 1913, or 1912, we want to know what the original cost was, and how much has been added to the original invoice price to give it its inventory value as of January 1, 1918.

Now, further than that, if there are certain other elements of cost added here, we want to know it. On the other hand, if they are just
6431 taking, as in some of these gas company ledgers he will find their accounts have just taken, the invoice price, and failed to add to it the cost of labor here and there, the cost of running the store where these things are spread, the cost of hiring telephone girls to take care of that appliance business, the cost of having a clerk, or two or three bookkeepers or more in the branch office to take care of that business—certain percentages of their cost would have to be added to it. That is why earlier in this argument I spread before your Honor the absolute need, if we are going to lead to any fair
6432 conclusion here, of having set up separate accounts to show every item of expense that has entered into the cost of selling or renting appliances. Now, all of these things ought to be done, and we ought not to have simply the vague general statement of the witness that there was an inventory in the branch office, which he looked at. He says, "Yes, I looked at it", meaning that he looked at it through Mr.

O'Mara or Mr. Littlejohn, or some one of the 6433
many branches of this concern. All of that ought to come out in a clear statement, and therefore my objection.

Gross profits—the whole thing a conclusion, putting in evidence at the very threshhold of this case of that kind is a very unusual practice. It means that we have got to spend thousands of dollars may be on something that will finally be thrown out of this case, and which ought to be thrown out now. You ought to set a day some day this week when we can come in and argue this out, and then if your 6434
Honor takes our view of it this whole matter may go out, and there may be $50,000 saved to the defendant. I submit to your Honor that that is the proper way to conduct this case.

Mr. Ransom: We are required by law to maintain this account. Certain things have got to go into it, and note A of account 441 says that in its annual reports to the Public Service Commission the reporting corporation will be required to analyze the credits and debits to this account. The question of the bearing of these things, we of course, may have some day to face. We are admitting here a 6435
gross profit. It is in a sense an admission against interest. We are swelling rather than reducing revenue——

Mr. O'Brien: Yes, you are swelling it all right. It strikes me your Honor that we ought to have at the very least some witness representing the gas company, not a subordinate, but somebody we can hold responsible for his

6436 statement, put on the stand to show how they conduct the business. They come and put on the stand here a certified accountant who takes what is handed to him, books, and says, "I have made comparisons and they are correct." What does he know what they are doing all through the year with these appliances? What does he know about the bookkeeper which is entailing a cost of six or eight dollars for material or labor that is charged on the consumer when they rent a range? What does he know about the amount of money required to
6437 be kept on deposit? A few minutes ago when we asked him whether there was not a deposit paid, whether a guarantee was not paid by somebody who took a prepay meter, he said he didn't know. If that is a measure of his knowledge, then he should not be asked these questions about gross profits. If he wants to say that in a certain book they set up these figures, naming the book, that is another thing. It is subject to our general objection.

Mr. Ransom: When it comes to expense, we of course will show the expenses of the appliance department.

6438 Mr. O'Brien: I submit your Honor that it would be a time-saving method if we were to set down a certain day this week where this whole thing of appliances can be threshed out. Let us argue it then, and have the matter before the Court, or, in lieu of that, have some officer of the company put on the stand to give us the whole story of how they conduct the appliance business, and what they do from year to year.

If the methods of 1918 changed from those of 6439
1917 or 1916, we will know it. Also, the way this company made its purchases. We will have to get to it sooner or later, to find whether these contracts were made on competitive bidding, and everything connected with it. If that is not done we ought to settle this week once for all whether these things ought to be eliminated from the case, or ought not to be eliminated.

Mr. Chambers: May I ask the Master if you have some idea that you are going to go into the question of appliances, and have the gas 6440
consumers of this city carry that business? I thought the inquiry here was as to the cost of making gas, question No. 1, what does it cost them to make gas and what did they get for it; and question No. 2, what is a fair return on the fair value of their investment in the gas making business? If they want to indulge in restaurants, and appliances——

The Master: Mr. Chambers, I have been looking through the balance of this complainant's Exhibit No. 205 for Identification. It apparently goes very much further than its title, "Revenue and expenses in the gas business", 6441
would indicate. It apparently attempts to summarize and tabulate the whole situation from the gas company's point of view, and there are a number of questions that occur to me as I have looked this over. I am very much puzzled as to just how to handle it. I am inclined to think—you have copies of this I think.

Mr. Chambers: What is the title?

6442 The Master: It is entitled "Revenue and expenses in the gas business".

Mr. Ransom: They have not had it in that form. They have the individual schedules, but the schedules are not marked.

The Master: They have these titled "Cost of production"——

Mr. Ransom: I take it they have, yes. I mean that they had not been bound together in a schedule at the time they were furnished to them in June.

The Master: My mind runs in this direction:
6443 I am inclined to overrule the objection made by you and Mr. O'Brien, and it will undoubtedly develop as we go along as to the items on these sheets, and the gas company's method of tabulating them, and Mr. Teele's method. I think that I shall allow Mr. Teele to proceed with his testimony as to what he has done with reference to these books, on which Judge Ransom is laying the foundation for the introduction of this tabulation and schedule, or statement of conclusions of this witness from those books in evidence. To be perfectly frank—I want to be perfectly frank in my statement—
6444 I should not consider that satisfactory proof of the cost of producing this gas. I should assume that Judge Ransom would supplement this proof with additional proof. Now, I cannot anticipate how far Judge Ransom is going. I can see how you gentlemen approached from your standpoint, not so much that these are not permissible or admissible as tabulations

made by this witness, as you are fearful that 6445
I may think that they prove this case.

Mr. O'Brien: He has gone even further than the books here when he sets up a profit.

The Master: No, he sets it up from the books.

Mr. O'Brien: He has made it on the schedules here. Not only that, but they are bringing in other years that are not in this case.

The Master: No, this is of 1918.

Mr. O'Brien: Not on my schedule, your Honor.

Mr. Chambers: Mine covers 1916 to 1918.

6446

Mr. Ransom: They have also been furnished. The defendants have also been furnished schedules——

The Master: There are other schedules covering 1916 to 1918?

Mr. Ransom: There are other schedules made up showing these figures here year by year. We are only talking now with respect to 1918.

Mr. O'Brien: Will your Honor hear me a minute? Here is what I think we have got to go slowly about. We have already met two or three snags in this case which may mean a completely abortive method on the part of the Company to get any ruling from the United States Supreme Court. 6447

The Master: Or from me.

Mr. O'Brien: Well, I don't know. You have accepted books, and I don't know whether you will correct your error or not. I think you were in error and have made a serious error in receiving the books. However, that is one big and

6448 monumental mistake in this case, which is going to result in throwing this case back from the United States Supreme Court some time in 1921, 1922, or 1923.

Mr. Ransom: I object to counsel continuing these speeches. I ask to be allowed to proceed with my examination.

The Master: No.

Mr. Ransom: Does your Honor overrule my objection?

The Master: Yes.

Mr. Ransom: Exception.

6449 Mr. O'Brien: This is a vulnerable part of the case. It enters into all kinds of money; it eats up all kinds of money. The method of keeping their books—this is most important if it is going to be considered by the Court, because they have not brought in all the elements of expense and segregated them, the elements of the appliance business, they are going to bemuddle these accounts, and the United States Supreme Court will never wipe from the statute books an eighty cent gas law where that is brought in this Court.

6450 Mr. Ransom: Why should you worry about that? The complainant is not worrying about it.

Mr. O'Brien: Well, you say we shall proceed along this policy, and if we make a mistake before the end we can correct it before we are through. We ought to settle on that now. We do not want to put men at work on the case if they are not in it. The men employed as experts for the defendant—the money for them

must be wisely and economically spent, and it 6451
is not necessary for them to go over these records that we claim are extraneous to the gas making business; therefore, I ask your Honor to weigh this matter and set a time, say tomorrow, when you will hear us on this subject.

The Master: Mr. O'Brien, I am going to ask this witness a few questions to get the record clear and get my mind clear on these questions, and then I shall rule as the questions develop.

Mr. Teele, when you were on the stand last Wednesday, the question came up as to your having checked various records with the 6452
original memoranda and records in the various works and stations?

The Witness: Yes, sir.

By the Master:

Q. There were several items that I particularly referred to then. One was the distribution pay roll?

A. Yes.

Q. The time book had to do with the distribution of labor. The receipt of merchandise was another item, the original receipt showing the receipt of merchandise?

A. Yes. 6453

Q. Then there also was an item that occurred to me with reference to the apportionment of superintendence based upon the amount of construction work done by other companies as compared with this?

A. Yes.

Q. Do I understand that since last Wednesday you and your assistants have analyzed the books

6454 that I received in evidence, being Exhibits 188 to 200, my recollection is, with reference to all of the supporting data and documents of every kind?

A. I think your Honor suggested that we should take one month at one station.

Q. I mean you have tested it?

A. I have done that. I made various tests.

Mr. Ransom: Much of it was done before.

The Master: Yes, much of it was done before.

Q. I mean you had done additional work, having in mind the thought that I had?

A. I have.

6455 Q. Are you prepared to say now that you, and your assistants under your direction, have analyzed the ledgers and the journals and the other books offered in evidence here back to every orginal item in the sense that you have taken some of the original records here and there for the purpose of determining whether the books have been accurately kept?

A. Yes.

Q. And distribution made in accordance with the policy of the company?

A. Yes.

Q. And on the lines testified here?

6456 A. Yes.

Q. So that your tabulations and this tabulation that is now marked Exhibit 205 for identification, is really based upon the books that I allowed in evidence last week, meaning the books for 1918?

A. 1918, yes.

Q. Checked or analyzed in the manner you have described?

A. Yes.

Q. You have not taken every original sheet or item in the time book or in the receipt of merchandise sheets, or in other records, but you have taken items at different points for the purpose of determining whether the accounts are substantially correct? 6457

A. I have.

Q. And that is all you have done?

A. That is all.

Q. So that in your opinion as an expert accountant, the books received in evidence are substantially correct?

Mr. O'Brien: Your Honor, permit me to record an objection, with due deference to your Honor, to the question and the line of questioning that has been indulged in. 6458

The Master: Yes, overruled with exception.

A. That is my opinion, they are correct.

Q. And this tabulation which you have made here, which is contained in Exhibit 205 for identification, is on the theory that these books have been correctly kept?

A. It is.

Mr. O'Brien: I respectfully submit, your Honor, that if you are going to catechise him on what he has done since he was last in Court, or on what his men have done, that he be asked to state who the men were, where they went to work, and actually and concretely what they did. This generalization is only what we had before. Unless he gets right down to bed rock so we can verify it and get to the same sources and check him up, cross-examination is absolutely useless. 6459

6460 The Master: I am asking these general questions, Mr. O'Brien, to the end that when Mr. Ransom is through and offers this tabulation in evidence, I am going to permit counsel for the defendant to cross-examine this witness. I think the questions that I have asked are sufficient to lay a basis for offering the paper as a tabulation. The tabulation, that figures you have given, you testify is a correct tabulation from those books?

The Witness: It is.

Q. And all of the items on this Exhibit 205 for
6461 identification appear in the books of the Company?

A. All the items that are so marked appear in the books of the company?

Q. Are there some of them contain your conclusions from these items?

A. There are some items that do not appear upon the books.

Q. What have you in mind, for instance?

A. Schedule 6, rental of jointly used facilities.

Q. Are the figures you have given here the result of your analysis of the books?

A. The total amount of $219,780.74 upon the ledger, at folio 1153. The deduction therefrom of
6462 $120,164.09 does not appear upon the books.

Q. Where did you get that from?

A. That is a deduction, as stated.

Q. Made by you?

A. Made by me.

Q. And based upon entries in the books somewhere?

Mr. Ransom: Based on records.

A. Based upon records submitted to me.

Mr. O'Brien: Your Honor, I think that is an 6463
exhibit that has not been offered to us.

Mr. Ransom: I think that is true. I think that schedule has not been——

Mr. O'Brien: You give us something that is not marked right, and then get in on something we have not got, a vital point in the case, about facilities that are rented to their affiliated companies.

The Master: Go on and ask your question. I will rule on these questions as they come along, Mr. O'Brien.

Mr. Ransom: We have several witnesses that 6464
want to get away early. May we suspend this witness now?

Mr. O'Brien: I object to a suspension of the trial. We are entitled to some courtesies as to what kind of proof is to be taken up here.

The Master: The application of Judge Ransom—these are the witnesses that did not show up at 9:15, and I haven't any feeling about these witnesses sitting around, but I will suspend Mr. Teele's examination.

Mr. O'Brien: Well, your Honor will note my objection to it?

The Master: Yes. 6465

Mr. O'Brien: I think the defendants have complained about the method in which this trial has been conducted during the summer months, being compelled to go on, and we object to the constant conveniences being given to the complainant in this case.

Mr. William B. Hogan: If your Honor please, I am subpœnaed as a witness in this

6466 case, about a matter of which I have no knowledge, and have no books, may I be excused?

The Master: No, and if you are subpenaed you will be here, and if you are subpenaed to be here at 9:15, you will be here at 9:15.

Mr. O'Brien: I may say these men are city employees. One of them was hauled down from the Catskill Mountains, where he was spending his vacation with his family, and I think it is unjust——

The Master: That is not my fault, Mr. O'Brien. I am suspending the examination to

6467 let these men get away. If I oblige the men you object, and if I don't oblige the men you object. Take this man who says he doesn't know anything and find out who he is.

Mr. Ransom: He is one of the deputies.

The Master: He says he doesn't know anything about it. Let's call him and find out whether he knows anything about it.

Mr. O'Brien: He says he was called here on a matter that is not in his domain, in the Tax Department.

The Master: Now, Mr. O'Brien, you will have to stop.

6468 Mr. O'Brien: I am going to have the record, when we get through, show the way in which the case is being conducted by the Gas Company.

WILLIAM B. HOGAN, called as witness in behalf of the complainant, being duly sworn, testified as follows:

DIRECT-EXAMINATION BY MR. RANSOM:

Q. Mr. Hogan, where do you reside?

The Master: Mr. Hogan tells me that when

the subpœna was served on him, he was told he 6469
need not be here promptly at 9:15 in the morning. Now, you better tell your process servers not to give any such instructions to witnesses, because it places them in a false position in Court.

Mr. Ransom: I had another arrangement, I thought to have another one here promptly, and he was not here.

Mr. O'Brien: Will you please make the record clear on that? I want the stenographer to get it.

Q. What is your position in the city of New York? 6470
A. Deputy Tax Commissioner.
Q. How long have you been such?
A. Since June, 1911.
Q. In 1918, prior to October 1st, were you assigned to a particular district or districts, and if so, what were the boundaries of that district?

Mr. O'Brien: I object as incompetent, irrelevant and immaterial.

The Master: Objection overruled.

Mr. O'Brien: Exception. I take it that these questions are about to lead up to an offer of some public records that may show an assessed valuation of real estate. I contend, your 6471
Honor, that that is not a measure of fair value, and that evidence when it is reached, will be incompetent, irrelevant and immaterial, and that, therefore, the questions now being asked the witness preliminary to it are likewise incompetent, irrelevant and immaterial.

The Master: The objection will be overruled.

The Witness: You asked me for 1918, sir?

6472 Q. Yes.

A. October 1, 1918.

Q. Prior to October 1, 1918?

A. For this particular year?

Q. For the year 1918.

A. That would be prior to October 1, 1917, because we make our assessments the year previous.

The Master: What was your territory for assessing purposes the year previous?

The Witness: For 1918, sir, from the north side of 79th street, from the Hudson River to Central Park, up along Central Park West to 110th street, east on 110th street to Lenox avenue; north on Lenox avenue to 116th street; west on 116th street to Morningside avenue; north on Morningside and Convent to 137th street; west on the south side of 137th street to Amsterdam avenue; north on Amsterdam avenue to 138th street, west on 138th street south side, to the Hudson River, along the Hudson River south to 79th street.

6473

Q. What is your present district?

A. The same district.

Q. What section was that?

A. It consists of part of Section 4 and part of Section 7.

6474

Mr. Ransom: I offer in evidence from the Greater New York Charter, Section 889, describing the duties of Deputy Tax Commissioners in assessing taxable property; Section 891-A, prescribing the form of annual record of the block map of taxes and assessments; Section 891-B of the tax map and identification of real property thereon; and Section 892, the

annual record of assessed valuation, what to 6475
contain and when to open for examination and correction.

Mr. O'Brien: Same objection, your Honor.

The Master: Is it necessary to offer in evidence sections of the Greater New York Charter? That is a statutory enactment.

Mr. Chambers: No, it is never necessary to offer in evidence a statute.

Mr. Ransom: I think it is, as part of the Federal records.

The Master: Well, I shall receive them. They will begin to be marked Exhibit 206. 6476

Mr. O'Brien: Exception.

The Master: What are they, four or five sections of the Charter?

Mr. Ransom: Four sections.

The Master: These four sections of the charter referred to by Mr. Ransom will be received in evidence and deemed to be marked Exhibit 206.

Sections 889, 891-A, 891-B and 892 of the Greater New York Charter received in evidence as Complainant's Exhibit No. 206.

By the Master:

Q. Mr. Hogan, you fixed these values prior to 6477
January, don't you, for the following year?

A. On October 1, 1917, for the year 1918.

Q. Our taxable year now is the current year 1918, is it?

A. Yes, sir.

Q. And your report is made October 1st?

A. Yes.

6478 Q. And is subject to complaints up to what time, some time in November?

A. The 15th day of November.

Q. So that they are subject to revision between the 15th of November and the first of January?

A. The first of October to the 15th of November. The books open on the first day of October, and they have six weeks in which to file objections.

Q. To object to this?

A. Yes.

Q. Then the Commissioners rule on those objections?

6479 A. Yes, sir.

Q. Between then and the end of the year?

A. No, sir, between then and the first day of February.

Q. The first of February?

A. Yes, sir.

Q. Of the taxable year?

A. Yes, sir.

Q. When we pay taxes in New York City, we pay it for the current taxable year, January 1st, to December 31st?

A. Well, the books—the taxes are payable on the first day of May and the first day of November.

6480 Q. Yes, but for that year, isn't that the idea?

A. Yes.

Q. So that your duty has been and is to fix the value of the real estate for taxable purposes before the books are opened on October 1st?

A. Yes.

Q. Upon which taxes are paid for the following year, beginning January 1st?

A. Yes, sir. 6481

Mr. Ransom: May I ask the witness certain questions?

Mr. O'Brien: I want to bring out the fact that the witness does not fix any value. He is a deputy in the field assessing values, and they are fixed by a board of tax commissioners. I don't want to have the record twisted on that point.

The Master: Let's get it right. He makes a tentative report as to what he thinks the value is.

Mr. O'Brien: Yes, and they may or they may 6482
not accept it.

The Master: And between then and the first of October is that passed on by the Commissioners at all?

The Witness: We make weekly reports as we go along.

The Master: Talk up so the stenographer can get it.

The Witness: I guess I had better give a history of the work. We are assigned to assess a district on the first day of April.

Mr. Ransom: All the taxable property in it?

The Witness: Yes, sir. 6483

Mr. O'Brien: That is not true.

The Master: The witness said——

Mr. O'Brien: He means real estate. What is the use of misleading him.

The Master: The witness will state in his own way. I assume your duties relate to real estate?

The Witness: Yes, sir.

6484 Q. Not to personal property?

A. Yes, sir.

Q. Now, you are assigned April 1st?

A. April 1st, yes, sir.

Q. Then you make weekly reports?

A. We make weekly reports and complete our books as of October 1st, those values being the tentative values for the ensuing year.

The Master: Go on.

By Mr. Ransom:

Q. Do you furnish to the Board under oath a detailed statement of all real property in your dis-

6485 trict?

Mr. O'Brien: I object to that as incompetent, irrelevant and immaterial.

The Master: Objection overruled.

Mr. O'Brien: Your Honor, that doesn't—what he may do under oath does not give property a fair value for rate making purposes.

The Master: That may be. Same ruling and exception.

The Witness: Well, not in the strict sense, I believe that you mean. I simply—on or about the last days of September I swear to the books before a Justice of the Supreme Court, and

6486 those books contain an itemized statement of the value of the property in my district.

Q. That is, you personally examine each and every house, building, lot, pier or other taxable property in your district?

A. Yes, sir.

Q. And you give the street, lot, ward, town and map number of all such real estate in your district?

A. In so far as it is givable.

Q. And the name of the owner or occupant is known? 6487

A. Yes, sir.

Q. And that is based on a personal examination?

A. Yes, sir.

Q. And that is put down in these books?

A. Yes, sir.

Mr. O'Brien: What book?

Mr. Ransom: Just a minute.

Mr. O'Brien: What book, I would like to have the record made clear.

The Master: He has already testified to a book that he swears to before a Supreme Court Judge. This witness has attempted to say several times something to the effect that he did not fix the value of properties referred to in this subpœna. Now, find out what he knows about it. 6488

Mr. Ransom: There is a situation in that respect that is hard. I did not want to put this witness on because the property to which I wished to interrogate him, the books have not come to court. The deputy who had a part of the district which is comprised in this witness' subpœna is not present, but doubtless will be very shortly, a man by the name of Tracy, and if I may withdraw this witness and put on one of the others, we may be able to correct this just a little later. 6489

The Master: I don't want to keep Mr. Hogan in court if he does not know anything about these particular properties.

Q. In Section 7 have you covered blocks 1999 and 1998?

6490 A. Yes, sir, I did.

Mr. Ransom: We have sent for the books on this, and they will be here in a little while. This witness may step down. I did not want to put this witness on, although your Honor insisted, but I realized the books were not here.

The Master: What difference does it make if the books are here or not, if the witness doesn't know anything about the subject of your inquiry. If he does know something then he will have to wait until the books come.

Mr. Ransom: Yes.

6491 The Master: If he doesn't know anything about the subject of the inquiry——

Mr. Ransom: I have asked him if he knows about Blocks 999 and 998, which are in his district, and on which I shall interrogate him as soon as the books arrive.

The Master: Yes.

Mr. Ransom: I will call Mr. Quinn.

Mr. O'Brien: Just a minute, your Honor. I would like to cross-examine this witness.

Mr. Ransom: I will object to the cross examination until we have finished the direct.

Mr. O'Brien: I want to bring out on the
6492 record the method by which these men were brought here.

The Master: They were brought by subpœna, weren't they?

Mr. O'Brien: I want the circumstances narrated as indicating the attitude of this company.

The Master: You will wait until Mr. Hogan

testifies to some facts that there is upon this 6493
issue. Step down, Mr. Hogan.

Mr. O'Brien: Will I have the privilege, when he is brought back, will he be brought back?

The Master: Yes, you will have the privilege of cross-examining on every point that is of any importance.

JOSEPH QUINN, called at a witness in behalf of the complainant, being duly sworn, testifies as follows:

DIRECT-EXAMINATION BY MR. RANSOM:

Q. Where do you live?

A. 123 East 86th Street. 6494

Q. What is your position with the City of New York?

A. Deputy Tax Commissioner.

Q. How long have you been such?

A. I was appointed in 1908.

Q. What is your particular tax districts?

A. At present?

Q. Well, yes, what is your present district?

A. This is 1920, I am assessing for now.

Q. Yes.

A. It is District 6, which practically runs from 14th Street to 40th Street. 6495

Q. What was your district for the preceding year?

The Master: What we want is for 1918, isn't it?

Mr. Ransom: We want the 1918 figures.

Mr. O'Brien: Your Honor, I want to have that settled now. The assessments that these men made were as of October 1, 1917.

The Master: Certainly.

6496 Mr. O'Brien: You call it the 1918 tax, of course?

Q. I want to know on what district were you in making up the figures for the 1919 tax?

The Master: For the 1919 tax?

Mr. Ransom: Yes.

The Witness: I was on Section 3.

By the Master:

Q. Where did that run?

A. It runs from 14th to 40th Street, from Block 828 to Block 992.

Q. 14th to 40th Street?

6497 A. Yes.

Q. Right across the Island?

A. From 14th Street and Fifth Avenue, going north on Fifth Avenue, then east to the River; then from 26th Street and Sixth Avenue up to the north to 40th Street, and then over to the East River, all that territory.

Q. You run up 14th Street and Fifth Avenue to 26th Street?

A. Well, it runs up yes, to the square, Madison Square, then I take from 26th Street and Sixth Avenue, on the north side, and run north to 40th Street.

Q. Then right over to the River?

6498 A. Right over to the River.

By Mr. Ransom:

Q. That includes Block 870?

A. Yes.

Q. 985?

A. Yes, sir.

Q. 982?

A. Yes, sir.

Q. 981?

A. Yes, sir.

Q. 991?

A. Yes, sir.

Q. 988?

A. Yes, sir.

Q. 951?

A. Yes, sir.

Q. 952?

A. Yes, sir.

Q. 953?

A. Yes, sir.

Q. 979?

A. Yes, sir.

Q. 978?

A. Yes, sir.

Q. And 987?

A. Yes, sir.

Q. Will you just describe this report which you make to the board under oath? That is how do you make your report under oath to the board?

A. I report so far as I can understand the oath we take, is when we swear to the books.

Q. You swear to the books?

A. That is the book called the annual record of assessed value, before a Supreme Court Judge.

Q. When is that done, approximately?

A. Well, that is approximately a few days before October 1st.

Q. And as of what date?

A. As of October 1st, the books open.

Q. In those books there is set forth each and every parcel of real property in your district?

A. Yes, sir.

Q. Do you also show the sum for which in your

6502 judgment each separately assessed parcel of real estate, under ordinary circumstances, would sell if it were wholly unimproved?

Mr. O'Brien: Objected to as incompetent, irrelevant and immaterial.

Mr. Ransom: That is the language of the statute.

Mr. O'Brien: I don't care what the language is. It doesn't make it any better because it happens to be in that statute. This is a rate case.

Mr. Ransom: This is a question of what he does.

6503 Mr. O'Brien: This is a rate case, and that is not the measure of value.

The Master: I will allow the question.

Mr. O'Brien: And that has been discarded, and it has even been discarded in this case, your Honor, the original case.

Mr. Ransom: Read the question.

Mr. O'Brien: I am reminded, your Honor, that there was a vehement argument made against this by the Attorney for the Gas Company in the original case.

The Master: I never read the record in the

6704 original case.

The Witness: Yes, sir.

Mr. O'Brien: Would your Honor receive a memorandum on this matter?

The Master: When we get to it. I am going to take the proof.

Mr. O'Brien: Subject to a decision later on as to——

The Master: As to its weight. 6505

Mr. O'Brien: As to its admissibility?

The Master: Not as to admissibility. As to its weight. I think the fact that Mr. Quinn as a sworn officer of the City, bound under his oath to fix a value for the property for taxing purposes, and in accordance with the statute bearing upon it, said that in his opinion this property under ordinary circumstances ought to sell for a certain price, is some evidence of its value.

Mr. Ransom: May I just call your Honor's attention to this fact——

6506

The Master: In fact, I think that Mr. Quinn, having no interest in this litigation, when he made these assessments, and having in mind only the interests of the City and a fair deal to the property owner, probably has reached a figure which may be fairer to all sides concerned than the experts hired by either side, but on that I am not going to pass at this time. I will take his statement.

Mr. O'Brien: But, your Honor, the value of property used for gas making purposes is one thing.

The Master: Yes, that is another element. 6507

Mr. O'Brien: The market value, the exchange value of property, is another, and these are very important questions in this case.

The Master: I think it is some evidence of the value, upon your theory.

Mr. Ransom: The Greater New York Charter requires him to state the sums which in his judgment each separately assessed parcel of

6508 real property under ordinary circumstances will sell for if they were wholly unimproved. The criterion laid down by the Supreme Court of the United States in the Minnesota rate cases and the other case, as to the value of land for rate purposes, is almost in the identical language of our statute—"The normal market value of land, the fair average market value", and so on.

Mr. O'Brien: Well, what did the Public Service Commission——

The Master: No, I won't permit that.

6509 Mr. O'Brien: Just a minute, this is part of this argument.

The Master: There is no argument now. I have told Judge Ransom to proceed with his next question. I won't have any argument.

Mr. O'Brien: Is he going to read into this record statements of that kind without me answering him?

The Master: If Judge Ransom would only take my indication to him that these things are perfectly useless, and simply encumber the record, he would not do these things, and I am not going to let you add to a lot of stuff in there

6510 that don't mean anything.

Q. What was your business before you became a deputy tax commissioner, Mr. Quinn?

A. I was a clerk in the Tax Department.

Q. On October 1, 1918——

The Master: Let me ask at this point. Does the Charter require any particular qualifications for the appointment of a deputy tax commissioner for the purpose of appraising values?

The Witness: It is a civil service examina- 6511
tion.

The Master: That is in the Charter, is it?

The Witness: Well, you cannot be appointed deputy commissioner unless you pass a civil service examination.

Q. It is a civil service examination that you pass?

A. Yes.

Q. And it is a civil service position which you hold, as regards your qualifications for such a place?

A. Yes.

The Master: I did not mean that. I under- 6512
stood that part of it, but I wanted to know whether there was any requirement in the Charter that you have to be an owner of real estate, or a broker, or anything of that sort.

The Witness: No, nothing like that.

Q. What in your judgment was, on October 1, 1918, the sum for which the parcel of land comprised in Lot 60, Block 870, on the Tax Map of the City of New York for 1919, located at the southeast corner of East 15th Street and Irving Place, would sell under ordinary circumstances if wholly unimproved?

Mr. O'Brien: Now, your Honor, we have got 6513
here a situation, and I think that instead of provisionally accepting evidence of records or documents or such like, that we ought to have some understanding as to where we are going. This building is——

The Master: He is asked about the land.

Mr. Ransom: I have asked solely as to the land.

6514 The Master: As to the land now?

Mr. O'Brien: Well, the land is used for a building.

Mr. Ransom: Yes.

Mr. O'Brien: The land has been shown to be entirely unnecessary for the gas-making business. The building is used, twelve stories, rented out, six or seven stories occupied by the gas company, and——

The Master: Don't you think I know what the condition of the building is? Your objection is that——

6515 Mr. O'Brien: I am thinking of the record now, not your Honor. I know that your Honor remembers that better than I do.

The Master: But the record has all that struck out, as to the kind of building, who uses it and how it is used. Your objection is that this building is not admissible because of the use to which it is put?

Mr. O'Brien: And on the other ground that it is not evidence of fair value.

The Master: Objection overruled.

Mr. Ransom: This is your field book which is here shown you?

6516 Mr. Chambers: Could I have that question read? He has not answered that question of your Honor's.

The Master: The question is withdrawn. Mr. Ransom is now asking the witness to identify the original records for the purpose of refreshing his recollection, so he can now ask him what it is worth.

Q. Is this your field book for the year 1919 (indicating)? 6517

A. Yes, sir.

Q. I am asking you as to lot 60, block 870. That is the southeast corner of 15th stret and Irving Place.

Mr. O'Brien: May I ask if Mr. Ransom is trying to bring out the assessments for 1902?

The Master: I was just going to ask Mr. O'Brien, the purpose of proving the 1919 assessments. I thought you were going to end with December 31, 1919, in your proof?

Mr. Ransom: We fixed that as of January 5th. 6518

The Master: I get your point. As I understand it, Mr. O'Brien, Mr. Ransom thinks he ought to prove what the witness' opinion was when he made his report prior to October 1, 1918. I will take it on that basis.

Mr. O'Brien: Are we any better off here than we would be with Mr. Teele, or any other man who comes without qualifying him as an expert?

The Master: Yes.

Mr. O'Brien: Are you going to assume because of the fact that Mr. Quinn is a deputy tax commissioner he is an expert? 6519

The Master: Yes, I am assuming in this instance that the public authorities have complied with the law, and have appointed a man qualified to do that work.

Mr. O'Brien: Are we going to assume that the Tax Commissioners themselves are ex-

6520 perts? They have the last say; they pass on the objections.

The Master: I am going to assume that public authority means something in the City of New York.

Mr. O'Brien: I mean are you going to assume the same on the Tax Commissioners?

The Master: I am not going to assume anything that is not before me now. I am going to assume now, and so rule, that Mr. Quinn, being a duly sworn official of the City of New York, charged with the duty of fixing these values, must have been appointed in accordance with law, after he had passed a Civil Service examination, showing his qualifications, and I am going to take his evidence.

6521

Mr. O'Brien: I am going to submit, with all due deference to your Honor's ruling, that only in the Supreme Court I put a Deputy Tax Commissioner on the stand, and he was not accepted. He had to be qualified.

The Master: I do not agree with the judge who did that.

Mr. O'Brien: You disagreed with Judge Greenbaum on the question of his authority.

6522 The Master: Well, I disagreed with Judge Greenbaum.

Mr. Ransom: Answer the question, please.

The Master: Is that your field book?

The Witness: That is my field book, yes sir.

The Master: Is that the book in which you made the entries at the time you arrived at the conclusion?

The Witness: Yes, sir.

Mr. O'Brien: He has been asked about a field book without anything in the record showing what a field book is. 6523

The Master: It may be his own personal memorandum. Does this book contain entries made by you at the time you arrived at the conclusion as to what that property was worth?

The Witness: Yes, sir.

The Master: Does that refresh your recollection as to what it was worth at that time?

The Witness: I have placed there the value which I considered the property worth at the time.

Mr. O'Brien: I object to that and move to strike it out as not responsive. 6524

The Master: Objection overruled and motion denied. Exception.

Mr. Chambers: Exception.

Mr. Hayward: Exception.

Mr. O'Brien: I move to strike out the answer, "I have placed there the value which I considered the property worth at the time".

The Master: Motion denied. Does this refresh your recollection when you look at it, so you can answer Judge Ransom's question when he asks you what value you did place on it? 6525

The Witness: I feel that it does.

Q. What was the amount?

Mr. O'Brien: Same objection, your Honor.

The Master: Same ruling.

Mr. Chambers: Exception.

Mr. Hayward: Exception.

A. The amount was for the assessed valuation of

6526 the property on the southeast corner of 15th street and Irving Place $410,000.

Mr. O'Brien: I object to the question further as being vague. He has not defined the lot and premises asked about.

Mr. Ransom: I asked him as to lot 60, block 870.

The Master: Is that what you are testifying about, Mr. Quinn?

Mr. O'Brien: Point it out.

The Master: Block 870, lot 60.

Q. 410,000?

A. $410,000 for the land.

6527 Q. That is the land wholly unimproved?

Mr. O'Brien: I object to that as incompetent, irrelevant, immaterial, and as leading, your Honor.

The Master: The objection is overruled.

Mr. O'Brien: Exception.

Mr. Chambers: Exception.

Mr. Hayward: Exception.

Q. Was this land wholly unimproved?

Mr. O'Brien: The land was improved and it is improved.

The Master: We know that. He values the

6528 land separately from the improvement, and he is giving us now the value of the land if the building were to be removed.

The Witness: Pardon me just a moment. What I want to say is this, that there are figures in this book for 1920, which I do not feel anybody, understand, is entitled to see them yet, because everybody comes up here and looks at them.

The Master: No, they won't. 6529

Mr. Chambers: I just want to see the figure he has given.

The Master: But he does not want you to do that, because he says it may show figures for other years.

The Witness: This is a field book. This is the first time in my history that I ever knew the field book to be entered in any court proceeding.

The Master: I won't permit counsel to look at it.

Mr. O'Brien: I object to it. It is confidential between the Deputy Tax Commissioners and the Commissioners of the city who are charged with the responsibility of assessing property, and whose final act makes the legal assessment on property within the city. I urge that this is a confidential communication. 6530

The Master: The objection is overruled.

Mr. O'Brien: And it cannot be used even for the purpose of refreshing the witness' memory. The proper course here is to bring the Tax Commissioner in and to bring the assessments of the city. Your Honor, we get down to the question of the whole inviolability of the Tax Commissioners of the city. 6531

The Master: I overrule your objection.

Mr. O'Brien: Assume a case where a tax commissioner——

Mr. Ransom: I object to Mr. O'Brien continuing.

The Master: Why should you object?

6532 Mr. Ransom: I should object because Mr. O'Brien takes up a quarter of the day.

Mr. O'Brien: I will take up the time if I think it is in the interests of the consumer. Conceive of a case where a deputy assessor has gone out in the course of his duties and put a certain assessment on a piece of property, and his superiors, under whose jurisdiction he is, see fit, or they do add a couple of hundred thousand to it, or not, or may substract; you can see, your Honor, we are bringing in here the confidential report of the Tax Department,

6533 which is contrary to the proper policy to be pursued in Court. I insist it is a confidential communication between the assessor and the tax commissioner.

The Master: I understand your point, Mr. O'Brien. I have overruled your objection. I do not want to hear any more argument about it. This witness has in Court a book which contains original memoranda made by him at the time he fixed the valuation of this property for 1919 taxes. I do not care whether it is confidential, I am not going to let it be marked in evidence for the public to see it. I am going to

6534 let him say how much he appraised this property at as of October 1, 1918, for the taxable year 1919. He has said, $410,000.

Mr. O'Brien: Do I understand your Honor to say you do not care whether it is a confidential communication or not?

The Master: Yes, that is precisely what I said, if it refreshes his recollection.

Q. Do you recall whether lot 60, shown on the

tax map for 1919, is made up of lots which are des- 6535
ignated on former——

Mr. O'Brien: I submit, your Honor, if he is being asked questions about it, I have a right to look at it.

The Master: I tell you I won't let you look at the book.

Mr. O'Brien: I will put on the record that I have sought the privilege during the direct examination of the witness concerning a book now before him, of looking at that book while the questions were being asked, of looking at the figures or notations thereon concerning 6536
which the witness is being catechised.

The Master: And the Master rules that in view of the statement of this witness, a sworn official of the City of New York, that on this memorandum book of his there is already contained items with reference to assessed values for the year 1920, he has no right to disclose it at this time and if disclosed it would be in violation of his duty and his oath—under those circumstances I will not permit counsel to look at this book.

Mr. O'Brien: Then that further emphasizes
the objection I made a minute ago, your Honor. 6527
I take an exception.

Mr. Chambers: Exception.

Mr. Hayward: Exception.

Q. Do you recall whether Lot 60 as shown on the tax map for 1919 is made up of lots which are designated on former lot maps and as lots 60, 59, 56, 54, 53, 50 and 49?

6538 A. I do not recall that, sir.

Mr. Ransom: That is already in evidence.

The Master: The witness says he does not know; that is the end of it.

Q. What in your opinion on October 1, 1918, was the sum for which the adjoining parcel of land, comprised in lot 47 of Block 870 on the tax map for 1919—for what, under ordinary circumstances, would it sell if it were wholly unimproved?

Mr. O'Brien: Same objection.

Mr. Chambers: Exception.

Mr. Hayward: Exception.

6539 The Master: Same ruling.

Mr. O'Brien: He was not asked and the law does not require him to state for what it would sell. I make the further objection that exchange values are not the fair values which must be determined in a rate case.

The Master: Same ruling.

A. $21,000.

Mr. Chambers: Was that lot 47?

Mr. Ransom: Yes.

Mr. Chambers: The way the record stands there will be a mix-up here, because the only lots we got— the record speaks all the while of this

6540 kind of a map (indicating). When he asked him about Lot 60, Block so and so, unless there is some——

Mr. Ransom: Exhibit 181 contains that schedule of changes, of which you were furnished a copy.

Mr. Chambers: 181?

Mr. Ransom: Yes, I think that is it.

Mr. Chambers: 181 does not show any 6541
dimensions, Mr. Malthy tells me.

The Master: There was an exhibit offered in evidence which I recall, explaining the change in the tax lot numbers, identifying the new numbers with the old numbers. It was not necessary to further give any dimensions.

Q. Mr. Quinn, what in your judgment on October 1, 1918, was the sum which the parcel of land comprised in lot 7 of Block 985 on the tax map of the City of New York for 1918 would sell for?

Mr. O'Brien: Will you ask the witness to define that so we will have the record clear— 6542
the metes and bounds?

Mr. Ransom: Block 985, lot 7, on the 1919 tax map.

The Master: That will not be necessary at this time, Mr. O'Brien. If the record is not clear now as to what Lot 60 is then the burden will be upon Mr. Ransom to show it. I am going to take this witness' testimony and let him go, with reference to these parcels.

Mr. O'Brien: Where is that located?

Mr. Ransom: 17th and 18th, between Avenues A and B.

Mr. O'Brien: Your Honor—— 6543

Mr. Ransom: I object to the interruption.

The Master: Mr. O'Brien has a right to make his objection.

Mr. O'Brien: You would like to have some one here who was deaf, dumb and blind, but unfortunately you have not got him.

The Master: You have an objection to this question, Mr. O'Brien?

6544 Mr. O'Brien: Parrot-like every minute I start to speak he emits——

The Master: Have you an objection?

Mr. O'Brien: I have an objection, and a very important one, your Honor.

The Master: Please state it.

Mr. O'Brien: I object to the question as incompetent, irrelevant and immaterial, on the general grounds already stated with respect to assessed valuations of the Tax Department of the City taken as a measure of fair value in a rate case. My further contention is——

6545 The Master: Isn't your contention, Mr. O'Brien, that the values fixed by Mr. Quinn for taxation purposes are not correct?

Mr. O'Brien: No, not correct, your Honor, would need explanation.

The Master: Is it your contention that when Mr. Quinn gave it as his opinion that Lot 60 was worth on October 1, 1918, $410,000—sworn to under his oath and testified to now as having been his opinion then—that he is not telling the truth?

Mr. O'Brien: No, we are in the realm of opinion now, your Honor. My contention is

6546 that the assessed valuation—aren't we continually met with the position in rate cases if the city or the state proceeds to use the assessed valuation made by a proper authority that we are overwhelmed with objections by the gas company? If they proceed to use even a statement made by the gas company, an admission under oath in an affidavit, we are met by continual objections, and right in this orig-

inal case the strongest kind of an argument made against statements made by gas companies in connection with the real estate value. I will refer that to your Honor later so that you will know what I have in my mind when I make these objections. As to the point involved, the fundamental difference or the fundamental objection is, your Honor, that we are dealing with a fair value in a rate case, and it is different from exchange value, and it is different from any other kind of value. 6547

The Master: You say it is different from exchange value. What do you mean by that? Mr. Quinn, when he values this property, has not in mind changing it for something else. 6548

Mr. O'Brien: I do not know what he has in mind.

The Master: The statute places an obligation on him.

Mr. O'Brien: I submit in the first place that you ought to have the Tax Commissioner here, not a Deputy Tax Commissioner. But having the Deputy Tax Commissioner here, he ought to be examined as to what he had in mind.

The Master: The statute, as I understand it, Mr. Quinn, places the obligation on you to assess the value of this property unimproved, having in the mind what it ought to sell for under ordinary circumstances; is that correct? 6549

The Master: Yes, sir; that is correct.

The Master: Is that the basis upon which you gave it as your opinion that the property was of a certain value?

The Witness: That is right.

6550 Mr. O'Brien: If you say "ought" to sell, your Honor?

The Master: That is my recollection—should sell or would sell, or words to that effect.

Mr. Ransom: Would sell.

The Master: I will not permit any further questions on that now, Mr. O'Brien.

Mr. O'Brien: Your Honor has brought up a matter in your own questioning that I would like to clear up here.

The Master: You can take that up later on.

Mr. O'Brien: Let me finish my objection, which goes to another branch.

6551 The Master: Haven't you finished your objection?

Mr. O'Brien: No, no, your Honor. We come to a lot up on 17th Street that is not used, or only a small portion, for gas making purposes.

The Master: I have got your point. You claim that this piece that he is now asking the witness the value of is not used for gas purposes.

Mr. O'Brien: And it must be eliminated from this case.

The Master: Your other point?

6552 Mr. O'Brien: The others I have given you.

The Master: The objection is overruled. The witness will state what he valued this property at as of October 1, 1918.

Mr. Chambers: I object, as to this piece of property because it is not used in gas making.

The Master: You join in the objection. Overruled.

Mr. O'Brien: Exception. 6553

Mr. Chambers: Exception.

Mr. Hayward: Exception.

A. $178,000.

Q. Will you similarly give your opinion as to the adjoining one, Lot 19, Block 985, located on the north side of 17th Street, between Avenues A and B?

Same objection, ruling and exceptions.

A. $6,500.

Q. Will you similarly give the value as to Lot 20 of Block 985?

Same objection, ruling and exceptions. 6554

A. $6,500.

Q. Will you similarly give the figure as to Lot 13 of Block 985? That is on 14th and 15th Streets, west of Avenue C, Block 982.

Mr. O'Brien: Is that lot 13?

Mr. Ransom: Lot 13, Block 982.

Mr. O'Brien: Your Honor, I will call to your attention that this block is the one that is loaned out, at least in part, to the Eagle Pencil Company for storage, and has according to the testimony in the case a building at the corner of East 14th Street and Avenue C that is entirely vacant, and it has a number of carts, 6555 some twenty odd or more carts belonging to Cunningham & Co., contractors, and used for the storage of other wagons by other people.

The Master: That is the same objection, that it is not being used for gas making purposes.

Mr. O'Brien: Not being used for gas making purposes.

The Master: Objection overruled.

6556 Mr. O'Brien: Exception.

Mr. Chambers: Exception.

Mr. Hayward: Exception.

A. $526,000.

Q. Will you similarly give the figure for Lot 1 of Block 989, located on 15th to 16th Streets, east of Avenue C?

Mr. O'Brien: I make the same objection there, your Honor, it not having been shown by definite testimony to what extent the property is being used by the New Amsterdam Company.

6557 The Master: Same ruling and exception.

Mr. O'Brien: On the further ground that it has not been shown that this is necessary to the plant, these holders and the governor house —necessary at the time mentioned, 1918, for the complainant in the manufacture of gas, they having the benefit at that time of the entire product and the entire capacity of the Astoria Light, Heat and Power Company, the whole stock of which company the complainant company owns.

The Master: Same ruling. What lot is this, Lot 1?

6558 Mr. Ransom: Lot 1, Block 989.

Mr. O'Brien: Exception.

Mr. Chambers: Exception.

Mr. Hayward: Exception.

A. $155,000.

Q. Will you similarly give the figure as to Lot 1 of Block 988, located on 14th Street to 15th Street, Avenues C to D?

Mr. O'Brien: Regarding that I make the

same objection, your Honor, that it has not 6559
been shown useful or necessary to the complainant in the manufacture of gas, and at the present time it is idle; at the time that the witness' opinion is dated, or the date as of which his opinion is being asked, only part of the plant that was being used was used in the manufacture or development of supplies of some kind for the United States Government, it not having been shown whether the company is being compensated or has been compensated by the Federal Government for the use of the plant at that time.

6560

The Master: Same ruling and exception.

Mr. Chambers: If the Master please, may I have an omnibus objection to all this?

The Master: Yes.

Mr. Chambers: On the ground that by keeping silent we do not concede in any way that it is usable or useful or should be considered as part of their investment in the gas making business.

The Master: Yes, sir.

Mr. Chambers: Exception.

Mr. O'Brien: Exception.

Mr. Hayward: Exception. 6561

A. $390,000.

Q. Will you similarly give the figure as to Lot 1 f Block 991, located at 14th to 15th Streets, Avenue B to Tompkins?

Mr. O'Brien: I add to the objection already made with respect to the plots as to which the witness has already testified the additional objection that this plot is concededly not used

6562 in the gas making business. It is being occupied entirely by Booth & Flynn and has been under a lease, the lease of which was produced in court, so that there is not the semblance of a right to a claim on the part of complainant that this is being used in the gas making business.

Same ruling and exceptions.

A. $180,000.

Q. Similarly, the figure as to Lot 47, Block 991?

Same objection, ruling and exceptions.

A. $56,000.

Mr. O'Brien: Where is that?

6563 Mr. Chambers: That is leased out.

Mr. Ransom: That is the bulkhead on the East River, from 14th to 15th Street.

Mr. O'Brien: The same objection is made to that your Honor and the further objection that the witness has not been qualified as an expert on bulkhead or dock property or land under water; on the further ground that the complainant here has not proven its title to said plot; on the further ground that if it be based on the grants made by the State, the value of such property represented by such

6564 grants may not be included in the base in a rate case, on which a fair return may be computed; on the further ground that it has not been proven if this holding is based upon grants from the State, it has not been proven that the present holders of the property have and are conforming with the conditions under which the grant was made; and on the further ground that the grants, if any, which are the basis of the holding at the present time here have expired.

The Master: Objection overruled. 6565

Mr. O'Brien: Exception.

Mr. Chambers: Exception.

Mr. Hayward: Exception.

A. $56,000.

Q. Similarly, the figure as to lot 35, in block 951, south side of 20th street, between Avenue A and First avenue?

A. $53,000.

Mr. O'Brien: I make the same objection to that, your Honor. I recall to your Honor's attention at this time that that property was shown to be occupied at that time by the National Coal & Coke Company. 6566

The Master: Yes, I anticipate I will have questions presented to me as to whether I can allow certain items. Objection overruled.

Q. Will you similarly give the figure as to lot No. 7 in block 952, 20th to 21st street, west of Avenue A?

A. $292,000.

Mr. O'Brien: I make the same objection.

The Master: Same ruling.

Q. Similarly, your figure as to the adjoining lot 35, block 952, southwest corner of 21st street and Avenue A?

A. $35,500. 6567

By Mr. O'Brien:

Q. What are the dimensions of that, Mr. Quinn?

Mr. Ransom: I object to the question.

The Master: You need not answer that question.

By Mr. Ransom:

Q. What, similarly, was your figure as to the adjoining lot, lot No. 30, of Block 952, Avenue A, between 20th and 21st street?

6568 Mr. O'Brien: I make the same objection.

The Master: Same ruling.

A. $24,000.

Q. Similarly, your figure as to lot No. 29, in block 952, northwest corner of Avenue A and 20th street, adjoining lots 7 and 30?

A. $11,000.

Mr. O'Brien: I make the same objection.

The Master: Same ruling.

Q. Similarly, your figure as to lot No. 1, of block No. 953, 21st to 22nd street, First avenue to Avenue A?

6569 Mr. O'Brien: I call your Honor's attention to the fact of the extraneous uses of that property, Central Garage, where the vehicles of the other companies are housed and repaired.

The Master: The same ruling. It is all the same general objection; that is, that it is not used for gas purposes. Objection overruled.

A. $526,000.

Q. Similarly your figure as to lot No. 1 in block No. 979, 21st to 22nd street, between Avenue A and marginal street?

Mr. O'Brien: I make the same objection.

The Master: Same ruling.

6570 A. $430,000.

By Mr. O'Brien:

Q. You are sure that is marked in the book, Mr. Quinn?

The Master: You need not answer that.

Q. Similarly your figure as to lot No. 6 in block 878?

Mr. O'Brien: I make the same objection.

The Master: Same ruling.

Mr. O'Brien: This is where they have that 6571
Hindenberg line, your Honor, Mr. Alrich's horizontal trust.

A. $365,000.

Q. Similarly, your figure as to lot 5, block 978, southeast corner of Avenue A and East 21st street?

A. $17,000. I have no mention of the southeast corner, but it is lot 5.

Q. Similarly, your opinion as to lot 37, of block 987, 20th to 21st street, Avenue B to marginal street?

Mr. O'Brien: Your Honor, I make the fur- 6572
ther objection that this plot was used by the United States Government as of the time. It has not been made clear whether it was given or rented for money, and it has not been proved how much was received at that time. At any rate, it was not used for gas-making purposes.

The Master: Same ruling.

A. $105,000.

Q. Each of these parcels concerning which you have testified, has been assessed as a separate lot; that is, the basis on which you make up your figures did not take into account plottage based on common ownership?

Mr. O'Brien: I object to this. He is trying 6573
to discredit his own witness.

Mr. Ransom: No, I am not discrediting him. I am simply trying to get at the basis.

The Master: Have you withdrawn it, or do you press your question?

Mr. Ransom: I will withdraw it.

6574 The Master: Have you any questions, Mr. O'Brien?

Mr. O'Brien: I have a lot of questions to ask. I think we had better finish it to-morrow morning.

Mr. Chambers: Judge Mayer is to hear us at 1:05 o'clock on our motion.

CROSS-EXAMINATION BY MR. O'BRIEN:

Q. Mr. Quinn, where were you served with a subpœna?

Mr. Ransom: I object to the question as immaterial.

6575 The Master: I will allow it.

A. I was served with a subpœna in a place called Maple Lawn, Round Top, near Cairo, about seventeen miles drive up the mountains from Catskill, which is probably 115 miles from New York City, near eleven o'clock at night, when I was attending a dance with my dear wife, by a gentleman who represented himself to the proprietor as one of my friends, and, of course, judging by the clothes, I assumed that probably he was, because he appeared in white flannels. It was at eleven o'clock at night, in the Catskill Mountains on Saturday evening.

6576 Q. And you are here this morning?

A. I was sacrificed for the reason that the vacation of my wife and two children has been absolutely spoiled.

The Master: There is no use in wasting time on this. I think it was bad judgment to have brought this witness down in this way.

Mr. O'Brien: I am finding out how the Gas 6577
Company is running this case.

The Master: What is the use?

Mr. O'Brien: There is a lot of use. These abuses can be corrected, and they should be corrected by some one making it his business to correct them. There was no occasion for that.

The Master: I have already said that it was poor judgment to drag this man down here and break his vacation, when he could have been called a week from now just as well.

Q. Mr. Quinn, what was said to you by the 6578
process server?

Mr. Ransom: I object to that.

The Master: Objection sustained.

Mr. O'Brien: Your Honor, I want to have it called to your attention officially, and ask you for aid ——

The Master: I haven't any power.

Mr. O'Brien: Yes, you have; you are the Court, and have the power, and I am going to ask the Court to correct these things.

The Master: I can do no more than indicate on the record that I think it was poor judgment. 6579

Mr. O'Brien: Are we to let these things go by and say, "It is not my business", and let these abuses go on? I think a fair statement should be made on the record that there were misrepresentations made. I am going to call to your Honor's attention as a representative of the Court, and part of the Court's business,

6580 the manner in which these subpœnas were served. Two of these men were brought here under false telegrams, they were brought here under deception, and I think your Honor should know it. It may not go to their credibility as witnesses, or to the vitals of this case, but it indicates the length to which this Gas Company is going in order to jam this case through this summer. I will ask the witness about these things, and you can rule them out if you see fit, but I will have the record bear the questions I am going to ask him.

6581 Q. Mr. Quinn, what statement did the process server make when he came to you?

Mr. Ransom: I object to that as immaterial.

The Master: Objection sustained.

Q. Did he represent himself to you as the process server from the office of Shearman & Sterling, or from the office of Ransom, Whitman & Ottinger?

Mr. Ransom: I object to that as immaterial. to serve you with a subpœna?

Q. Did he when he saw the manager of the place where you were indicate to him that his purpose was to serve you with a subpœna?

Mr. Ransom: I object to that as incompe-

6582 tent.

The Master: Objection sustained, and I am not going to permit any further questions along that line.

Q. Were you furnished with mileage at the time the subpœna was served?

Mr. Ransom: I object to the question as immaterial. He is here.

The Master: It is immaterial, but he can tell 6583
us whether he was foolsh enough to come down without getting his mileage.

A. He furnished me with $13.10.

Q. Now, Mr. Quinn, was anything said to you before you came into court this morning by the man who served you with the papers or by counsel for complainant?

Mr. Ransom: I object to that as immaterial.

The Master: I will allow that. I don't think you are going to get anywhere in attacking this witness' credibility or his honesty, are you?

Mr. O'Brien: Whose credibility? 6584

The Master: This witness.

Mr. O'Brien: Your Honor entirely misconceives the purpose of the question I have been asking. I have brought these matters to your attention because you, as an officer of this Court, have the responsibility of correcting the abuses which they have made of a process, and to correct the manner in which they are conducting this case. You have some responsibility here, and that is why it is not correct to attack his credibility. I have asked him those questions, as I am going to ask the other deputy tax commissioners who were brought 6585
here, two of them on telegrams that were misleading and were falsifications, and I think it should be brought out and some action taken. If it was the work of counsel for the complainant some reference ought to be made to some authority that can correct such abuses.

6586 The Master: This is not the place to do it.

Mr. O'Brien: Then how can it be done?

The Master: I don't know.

Mr. O'Brien: It has been my experience that every judge before whom I brought up such matters as this would stop the machinery of the court to hear the matter and make a sworn record upon which some action might be taken.

The Master: But unfortunately I am not the court. I am simply the court's representative to try out one issue. If you feel that this matter ought to be brought before the District Judge do it in the proper way, but don't take up my time with it. It has no bearing on the question of the cost of making gas. I have gone as far as I can by indicating, as I have already done, that I do not think counsel for the complainant was justified in subpœnaing this witness, for instance, on a Saturday night, in the Catskills, to bring him down here this morning when his vacation would probably be over in a few days, and he could come down then. This case will last another month, and it would be easy enough to get him down.

6587

Q. What was the name of the gentleman who 6588 served you with the subpœna?

A. He told me his name was Mr. Kane.

Q. Did he say he came—from whose office did he say he came?

The Master: I have ruled that out. Go on and ask this witness something else.

Mr. O'Brien: I think we ought to fix the responsibility.

The Master: Haven't I told you I cannot? 6589

Mr. O'Brien: If it is counsel's act, and not that of Shearman & Sterling, we ought to know it.

The Master: I have said all I can say about it; I can't do any more.

Q. Mr. Quinn, before you came here today with these records did you consult your superiors?

A. No, sir, I did not.

Q. What is the process that you go through in the matter of the field book? Is that kept permanently in the office of the department?

A. No, we are permitted to take that book home, 6590
and we use it in the field, carried it under our arms.

Q. Did you every carry it under your arms out into the field?

A. Yes, absolutely.

Q. And you return it each day to the department?

A. No, sir; only once a week.

Q. Meanwhile it is kept in your home?

A. Yes, of course we are at liberty to return that if we desire, but we report once a week, every Monday.

Q. The figures that you have given this morning 6591
are they the final figures collated by you in 1918 for the tax of 1919, or are they 1919 figures which, if they are adopted by your superiors, the Tax Commissioners of the City of New York, will find their way into the assessment rolls for 1920?

A. They are my 1919 figures which were made by me for the year 1919. My 1920 figures are new figures which will be put in my field book for the valuation for the 1920 taxes.

6592 Q. Do you know whether these figures were changed by your superiors?

A. Do you mean on application? By application for reduction?

Q. In any way?

A. Why, I believe some of them have been reduced on application.

Q. Which ones?

A. I would have to refer to the books again; I cannot very well tell you offhand.

Q. Haven't you got the field book there?

The Master: He has got to go through all

6593 his field books and check them up.

We will adjourn now until 9:15 to-morrow.

Adjourned to Tuesday, August 26, 1919, at 9:15 A. M.

Last Complainant's Exhibit 206.

Last Defendants' Exhibit U.

6594

CONSOLIDATED GAS COMPANY OF NEW YORK vs. NEWTON, ETC., *et al.* 6595

Before ABRAHAM S. GILBERT, Special Master.

NEW YORK, August 26, 1919.

Met pursuant to adjournment.

Present: MR. RANSOM, MR. VILAS, MR. GOETZ, of Counsel for Complainant.
MR. CHAMBERS, of Counsel for defendant Newton.
MR. HAYWARD and MR. CLARK, of 6596
Counsel for Public Service Commission.
MR. O'BRIEN, of Counsel for defendant Swann.

Mr. Chambers: If the Master please, yesterday, on the 25th inst., pursuant to a notice which the defendants had previously served on the complainant, counsel now here in Court appeared before Judge Mayer upon an application to modify the order made herein by Judge Mayer on May 16, 1919, appointing your Honor 6597
Master to hear and take the testimony in this case.

The motion was addressed to sub-division 2 of the order and asked for a modification of that sub-division so that your Honor might, in your discretion, have control and authority over the sessions wherein testimony is taken, fixing the hours, etc.; and it was based prin-

6598 cipally upon the ground that counsel for the defendants had found that the hours and the continuous sessions in this case in the summer time, when counsel had had no vacation, were too exacting. After hearing argument—the argument lasted for an hour and ten minutes, Judge Mayer said he would render a decision after the complainant's counsel had furnished to the defendants an inventory of the property. That is as I understood it. If I am in error, correct me.

Mr. O'Brien: A list of the property.

Mr. Chambers: They were to furnish a com-
6599 plete list of all the property, both real and personal, of whatever nature and wheresoever situated, that they claim goes into the rate base upon which they ask a fair return. I understood that was to be furnished, and then he would decide this motion.

Mr. Ransom: Does the Master wish to try out here upon statements of counsel what took place before Judge Mayer? I think the whole thing should be stricken from the record.

Mr. Chambers: It is proper that we state it upon the record, because it is part of the trial of this action.

6600 Mr. Ransom: If it was a part of the trial of this action it should have been taken stenographically, and it is a matter of intense regret, in view of the statement of Mr. Chambers, that it was not so taken.

I shall be glad to refrain from going further into the matter of what took place before Judge Mayer. So far as this record is concerned, I think the facts might stand upon this: That there was an application

made by counsel for the defendants of the 6601
nature which Mr. Chambers has stated. There was at the same time an application made by counsel for the complainant for an increase in the hours, now that the cooler weather has come.

Mr. Chambers: Upon no written paper.

Mr. Ransom: I said informally. Unless Mr. O'Brien sees fit to go at length into what took place before Judge Mayer, yesterday, I shall not do so. Judge Mayer reserved decision.

Reference was made upon the argument be- 6602
fore Judge Mayer to a memorandum or statement which had been requested by the Master several days ago, in the nature of an indication of the various elements of the company's property, which the complainant proposes to ask the Master to find as a part of the rate base for the purposes of this case. The statement was made to Judge Mayer that that would be furnished at some time during the coming week. Judge Mayer stated that he would decide the matter addressed to him upon the filing of that statement with him by complainant's counsel.

The Master: Now, Mr. O'Brien, do you want 6603
to add anything to this statement? As I understand it an application was made to Judge Mayer for a modification of this order, and Judge Mayer postponed ultimate decision of it until a statement of some kind, which he has directed shall be furnished to counsel for defendants, has been furnished. Is that correct?

Mr. O'Brien: That is not complete. There

6604 are two or three things that I will put on the record. Counsel can correct them——

Mr. Ransom: I object to going into it.

The Master: Just go ahead and add anything you want. I will hear what Mr. O'Brien wants to put on the record, and then I will make disposition of it in some form.

Mr. O'Brien: Without going into the complete detail as to the colloquy or symposium that took place before Mr. Judge Mayer yesterday, I want to say as a matter of record in this case, that counsel for the defendants again places before the court the fact that the inventory which was requested by the defendants 6605 on May 16, 1919, when we were before Judge Mayer upon the settlement of the order appointing the Master in this case, that that inventory has not yet been furnished to us. Secondly, that the complainant's counsel have not as yet replied to or furnished us, as requested, with the list of the original cost of the property of the complainant upon which they claim a fair return, and where the original costs are unavailable, with their estimated original costs, and the basis of said estimate. The Court's attention was further called to the request which had been made by counsel for the 6606 defendants for nine different cases of information as set forth in the record, which were given in detail to the Court upon yesterday's argument. The Court's attention was further called to the fact that we were refused the right or the privilege of visiting the offices of the complainant company and the branch offices and branch works and consulting such records as might be there within reasonable

hours and in an orderly and reasonable way. 6607
Now, as to the record of original costs, counsel stated that they did not feel called upon to give them, that they did not feel that they should prepare the defendant's case; that, however, they were giving them some information upon that subject, and they had given them that information as to property purchased since 1905, and as to other properties they were giving them some or preparing some information. As to the question of the inventory counsel stated that they would be ready within a few days. In other words, that the statement of what the complainant would claim as the 6608
base upon which a fair return might be computed in this case, would be furnished to us. The reason I am going into that definitely, your Honor, is that counsel's description of what he says the Master has asked him to give us is a little bit different than what we have described. In other words, we have asked for a complete inventory of their property as involved in this case, and he has framed that a little bit differently by stating he has been asked to give some indication as to what they will claim a return upon. I am calling your Honor's attention to that so that later on if 6609
we do not get what we want, your Honor will see where the subterfuge is. As to this privilege to visit the properties and see the books as they stand in the files of the company, the Judge said that he would not grant that—he would not direct that that permission be granted, that if he owned the books, he would not let us in either. As to the eight or nine different points of this information which were

6610 requested, they were not taken up seriatum and settled. The meeting concluded, as has been indicated by the statement by his Honor that he would await the furnishing of the inventory spoken of and at that time would make his decision upon the motion that the order be modified so as to give the Master ample and unrestricted discretion to take such adjournments in the case as he saw fit under the circumstances that might arise.

The Master: Do you want to add anything to that?

Mr. Ransom: I don't think it is necessary.

6611 The statement is colored and an inaccurate statement of what took place before Judge Mayer. I prefer to try the issues here. So far as the matter which was submitted before Judge Mayer, his ruling upon that will appear in due time. So far as the question of this estimation or indication of a rate base, that, of course, will be furnished, as was said to your Honor some time ago.

Mr. Chambers: What makes counsel say it is colored and inaccurate?

Mr. Ransom: Because it is.

Mr. Chambers: I don't think that is fair, because I made a fair statement.

6612 The Master: Mr. Chambers, I have had all I am going to have on this record about what happened. I am not going to have any dispute between counsel, and I am not going to have any recriminations or attacks.

Mr. O'Brien: I don't rise for that purpose, your Honor.

The Master: That is enough. You gentlemen have spread upon the record your views o

what occurred before Judge Mayer, and I think 6613
it is entirely unnecessary before this Court. You deemed it necessary, and I let you put it on, but I won't allow any further argument by counsel.

Mr. Chambers: I want to reserve on the record counsel's stating that the statement is inaccurate, when I say it is fair.

Mr. Hayward: I would like to make a statement, not on the record if you don't want it on the record. The Judge, with all fairness to him, is entirely too free with his statements. Yesterday before Judge Mayer I tried to tell the Judge what my recollection was of what had 6614
happened in here on the question of our objection and our argument regarding the admissibility of these books and the tabulations that had been subsequent to them, and I was bold enough to tell the Judge that I considered that after the Master had heard the argument on both sides, that he had rather held our way, and that we had won our point entirely. Judge Ransom stood up and told Judge Mayer that the statement was inaccurate, because it is untrue. Now, I don't think that Judge Ransom should say that statements made by opposing counsel are untrue. If we say the slightest 6615
thing about him he takes the greatest offense, but there are always two sides. He must not say what we say is untrue, because I have not said anything untrue; I have not attempted to color anything. There are always two sides to all these things. A man cannot expect to attack and not have a comeback on it. We can't call each other—we cannot accuse or charge each other of saying untrue things and colored

6616 things, without expecting our opponent to come back.

The Master: Do you think it makes any difference to me?

Mr. Hayward: Yes, it make a lot of difference to me.

The Master: I know, but do you think it makes any difference to me?

Mr. Hayward: I don't know whether it does or not.

The Master: Well, you know it doesn't.

Mr. Hayward: Let me just give an illustration. I saw a case tried before an old county
6617 judge out west one time, in which the lawyers abused each other like a lot of pickpockets back and forth, and finally this mild mannered old judge said, "Now, gentlemen, gentlemen, please, please", he said, "stop calling each other names and liars and pettifoggers, and let's get down to some of the disputed facts in the case." If the Master please, we cannot go on here by accusing each other of coloring everything and making untrue statements. You know whether the statements are true or not and whether they are colored or not, and I think since this case has begun, there has
6618 been altogether too much friction and hostility between counsel. I don't think it is necessary, and I will say I think Judge Ransom started it. Now, so far as I am personally concerned, I have always been able to get along with opposing counsel well, but in this case I do not like to have Judge Ransom or anybody else get up and say I make untrue statements, or make colored statements. I have a

colored regiment, but I do not make colored 6619
statements.

Mr. Ransom: Mr. O'Brien stated he had been denied the opportunity to visit the offices and branch offices of the company. There has been no such refusal. There has been no refusal or controversy so far as branch offices are concerned or so far as the matter of visiting the main office is concerned. He has been there on a number of occasions. He said yesterday that he wanted an opportunity to go through from room to room and place to place in the general building, and Judge Mayer said of course he should not be permitted to do that. But that 6620
is not a refusal of an opportunity to visit offices or anything of that sort. I do not desire to put one counsel's statement against another on that, but at the same time I could not let that kind of a statement pass undenied on the record.

Mr. O'Brien: I want to say one thing to you in connection with the report made by each of us of certain things that have transpired here. I made the statement,—I think it was I or one of the defendants' counsel—that your ruling as to the admissibility of the books of account was that you were going to take them subject 6621
to developments, or words to that effect. We used also the word "provisional".

Mr. Chambers: For what they are worth.

Mr. O'Brien: And that was met with the statement that that was not true, that they were received in evidence without conditions. The implication was—Mr. Ransom did not say without conditions, but the innuendo was that they were.

The Master: The answer to all that is the record shows that I did. Doesn't it?

Mr. O'Brien: Yes, the record shows what you did.

The Master: Then let us go ahead with the witnesses who are here.

Mr. O'Brien: I want you to understand that he thinks they are absolutely in evidence and we think they are in as you said they were put in.

The Master: The record shows what I said
6623 These witnesses here have no interest in the matter and they ought not to be here half a minute longer than we can help.

WILLIAM B. HOGAN, recalled.

DIRECT-EXAMINATION BY MR. RANSOM CONTINUED:

Q. Mr. Hogan, you testified yesterday that your district includes Blocks 1999 and 1998?

A. Yes, sir.

Q. Did you in making up your report for the 1919 taxes furnish to the Tax Board of the City of New York a detailed and sworn statement of all the taxable property in your district?

6624 A. Yes, in the sense that I swore to the annual record of assessment that contains those block numbers.

Q. And you have personally examined each of the properties?

A. Yes, sir.

Q. And you set forth the sum for which in your judgment each separate parcel of real estate under ordinary circumstances would sell if wholly unimproved?

Mr. O'Brien: I object to the question as incompetent, irrelevant and immaterial; first because——

The Master: You are basing this objection upon all the grounds upon which you based objections to the testimony of Mr. Quinn yesterday on the same line?

Mr. O'Brien: It may be well to sum up and then let my objection rest for this morning's session.

The Master: Very well.

Mr. O'Brien: First, upon the ground that the 6626
assessments as finally fixed by the Tax Department of the City for the purposes of taxation of the complainant's property are not evidence of the fair value of the complainant's property in a rate case, for rate maxing purposes. Secondly, because the information now sought through the question relates to a confidential communication between Deputy Commissioner Hogan and his superiors, the Tax Commissioners of the City of New York. Thirdly, because the witness has not been qualified as an expert on real estate values and he is not necessarily an expert because he is a deputy tax commis- 6627
sioner or other subordinate of the Tax Department of the City of New York. He must be qualified as an expert first before his opinion may be elicited as to the value of the property in question at any given time.

The Master: Before ruling on that objection and in order to make it perfectly clear on the record, if it is not there already, I will ask some questions.

6628 By the Master:

Q. Mr. Witness, you are a Deputy Tax Commissioner?

A. Yes, sir.

Q. Appointed by the Commissioners of Taxation of the City of New York?

A. Yes, sir.

Q. In order to procure that appointment it was necessary for you to find your name upon an eligible list under the Civil Service law?

A. Yes, sir; it was.

Q. Are you in the competitive class?

A. Yes, sir.

6629 Q. In the competitive class of the classified service of the State?

A. Yes, sir, of the City.

Q. Well, it is the classified service of the State under the City's jurisdiction. And before your appointment as a deputy tax commissioner you took a competitive examination?

A. I did.

Q. Which included the qualifications for that office?

A. Yes, sir.

Q. As a result of which your name was placed upon an eligible list?

A. Yes, sir.

6630 Q. On which you were appointed a deputy tax commissioner?

A. Yes, sir.

The Master: The objection will be overruled and exception allowed.

Mr. O'Brien: I wanted to fortify my objection with a statement, your Honor, which is

part of my objection on that score; first, that 6631
the Deputy Tax Commissioner or a subordinate of the Tax Department is not necessarily an expert for the purpose of testifying in this case. There is no legal presumption that he is an expert which may legally take the place of a requirement that he qualify here as an expert; that in all the proceedings I am acquainted with, condemnation, tax *certiorari*, or any other litigations involving the value of real estate, no man who was ever connected with the City Tax Department has been accepted as an expert upon the ground, without 6632
examination, and for the reason that he was a Deputy Tax Commissioner. Further, that any subordinate such as a field deputy in the Tax Department is only a part of the machinery, the tax making machinery; that it involves many processes, it involves assessments levied upon the property in question in previous years by other inspectors, which is part of the foundation of the assessment for a given year. It involves the rules and regulations which they have for use for general purposes. I mean general rules as to the measuring of values in given neighborhoods at given 6633
times—measuring the values of improvements upon real estate according to certain fixed rules that govern in that department and which must be followed by the subordinates. It involves the application for reduction on the part of the party assessed, and either their application or their omission to apply for a reduction with the consequent deductions that

6634 may be made from either fact by the Tax Commissioners. It involves the action of the Tax Commissioners themselves who are usually selected for some knowledge that they have of real estate matters. In other words, the final assessing body is the tax commission. So that this catechising of a deputy working as part of this machinery in the city taxing department, the delving into private communications between him and his superiors contrary to law, contrary to the policy of the law, makes the witness entirely objectionable here and his
6635 testimony inadmissible. On these grounds, therefore, I make that objection.

The Master: I overrule the objection. I take it that all counsel for defendants join in that objection. The objection is overruled and exception allowed to all defendants, and I shall take this testimony under that general objection and exception, so that it will not be necessary to repeat the objection from time to time.

A. Yes, sir.

By Mr. Ransom:

Q. What, in your opinion was, on October 1, 1918, the sum for which the parcel of land comprised in
6636 lot 1, of block 1999 on the tax map of the city of New York for 1918 would, under ordinary circumstances sell for, wholly unimproved, this being the parcel at West 132nd to 133rd street, east of 12th avenue, the so-called Riverside Drive holder property?

Mr. O'Brien: I make the same objection as already made, and the further objection that the question calls for a measure of value that

does not conform to the rule in either rate cases 6637
or any other case.

The Master: Objection overruled; exception.

A. $165,000.

Q. Now, will you similarly give the figure representing your opinion as to each of the lots 50, 53, 54, 55 and 56 in block 1998, on the south side of East 132nd Street, between Broadway and 12th avenue?

A. Lot 50, $22,000; lots 53, 54, 55 and 56, $7,000 each.

Q. A total of $50,000?

A. I haven't added it up—yes, $50,000.

Mr. Ransom: That is all. 6638

CROSS-EXAMINATION BY MR. CHAMBERS:

Q. Mr. Hogan, how long has lot No. 1, in block 1999, about which you have just spoken, been within your district, or the district under your jurisdiction in the tax department?

A. Since 1916.

Q. And before that you had nothing to do with it?

A. Absolutely nothing.

Q. Now, can you give me the assessment for it for 1915?

A. Only as to the total, the total assessed valuation, not the land. 6639

Q. You can't divide it up?

A. No.

Q. Why not?

A. Because this field book runs over a series of about five or six years. I would like to say something off the record, if you will permit it.

The Master: If it is off the record, somebody will say he wants it on the record.

6640 The Witness: I will say it on the record, but it will be only my opinion.

The Master: Make your statement, and if somebody wants to object, he may do so.

The Witness: The field book from which I have testified only contains two columns for the present year and for the year prior, the land columns only. We erase these from time to time, so that I cannot always testify back with any degree of accuracy as to what the land was in 1916.

Q. Could you if you had other books and records?

6641 A. Certainly. I believe these books should not be here. I believe the proper books——

Mr. Ransom: I object to the witness' statement.

Q. This $165,000 for the property I am asking you about was for the 1918 taxes, was it?

A. 1918 and 1919.

Q. What is the tax year here in the city?

The Master: We have been through that, Mr. Chambers.

Mr. Chambers: Is it clear that it begins on October 1st?

The Master: No, it does not begin on October

6642 1st. The tax officials open books fixing the value of the property—I am now stating the testimony—the books are opened October 1st. They are subject to examination by the public, and to complaint by the public until November 15th. The figures are then subject to change between then and the end of the year. Our tax year is the calender year, January to December, the taxes being paid one-half May 1st and one-half November 1st.

Mr. O'Brien: Your Honor, I would like to 6643
bring to your attention on account of the statement made by the witness, the full force of the situation that is being created by the examination of Judge Ransom. I would like to ask him now whether or not there are pending any applications or any attacks upon these assessments upon the part of the complainant company. If it be true that there are pending any litigations, or any litigations are proposed, if the foundation has been made for an attack upon these assessments, then the examination of the witness, bringing him here under sub- 6644
poena in this hearing, and requiring that a private communication between him and his superiors be used for the purpose of refreshing his memory, that is equivalent to an examination of the witness before trial without the usual safeguards being thrown around it; so that in order that we may not indulge in malpractice here unwittingly, I think counsel should make it clear whether or not there were any attacks made upon any of these assessments by the complainant company, and whether or not they have taken steps, or intend to review by *certiorari* any of these assess- 6645
ments.

Mr. Ransom: Of course there is nothing private about any communication concerning which I have interrogated the witness. I have not asked this witness for anything which is a private communication, or anything which has not been full public property from and after the first of——

6646 The Master: I am interrupting Judge Ransom. Keep your record as far as you have it. The one question I am going to permit you to ask, if you care to ask it, are any *certioraries* pending attacking the assessments as made by the City for the year 1919.

Mr. Ransom: Some *certiorari* proceedings of the company are started and are pending. These proceedings do not include any attack or any request for review of the values of land testified to by the witness Quinn, the witness Norman or the witness Hogan.

6647 The Master: There has been no witness Norman yet. As I understand it, no *certioraries* are pending attacking the assessed values as fixed by the City, as to land.

Mr. Ransom: There are three or four parcels as to which there is a claim of disproportionate increases, or disproportionate assessments. There are no proceedings pending with respect to any other land values. The facts as to the disproportionate increases concerning which, as to four parcels, there is a proceeding pending——

6648 The Master: Are those included in Mr. Hogan's parcels?

Mr. Ransom: They are not, nor in Mr. Quinn's or Mr. Norman's.

Mr. O'Brien: I would like to ask counsel if there are any proceedings pending or contemplated attacking the assessments of the State.

The Master: I will not permit that to be answered just now, Mr. O'Brien.

Mr. O'Brien: Involving the franchise taxes.

The Master: We will get to that when we come to the franchises. We are talking now about real estate. 6649

Mr. O'Brien: The return made to the State Department involves land.

The Master: I know, but we are now talking about the land values as fixed by the City. The State *certiorari* proceedings, if any there be, relate to the intangible rights that are deemed to be land under our statutes.

Mr. O'Brien: Then I understand that you do not intend to litigate these?

The Master: I will not permit any inquiry on that point. Mr. Chambers has the floor. 6650

Q. Mr. Hogan, the $165,000 for this particular piece of property was the value you placed on it as of what particular time?

A. As of October 1, 1918, for the 1919 assessment.

The Master: You see, Mr. Chambers, while these gentlemen are fixing the assessed value of the property, the City is trying to make up the budget as to how much it will have to assess, and when they have the assessed values and the amount of the budget, they can then fix the tax rate, and not before. That is done in the last week of December, my recollection is. 6651

Q. When did you make an examination of this property last, do you remember?

A. Yes, sir, I do.

Q. When?

A. On or about May or April of this year.

Q. You visited this particular piece, did you?

A. Yes, sir.

6652 Q. And looked it over?

A. Yes, sir.

Q. And have you visited it in other years?

A. I certainly did.

Q. When you visit the property, do you go alone, or do you have a staff along with you?

A. Sometimes I go accompanied by an assistant, other times I am alone.

Q. And as Deputy Tax Commissioner in charge of this district within which this property is, are you solely responsible for the valuation of the property in your district?

6653 A. So far as I understand, yes.

The Master: I think that is a question of law, Mr. Chambers.

Q. Do you fix the primary valuation?

A. I do, yes, sir; the tentative value.

Q. I mean are you the first one in the list in your department that places a value upon the property?

A. Yes, sir.

Q. And that is subject, I suppose, to review afterward?

A. All sorts of criticism and review.

Q. How many years have you been at the valuing

6654 of property?

A. Eight years, since 1911.

Q. And before that, what experience had you had?

A. How far back do you want to go?

Q. Well, what was your business just prior to the time——

A. Immediately prior to that, I was in the real estate business for seven years.

Q. Here in the City? 6655

A. Yes, sir.

Q. Buying and selling real property?

A. Yes, sir.

Q. And what was your position when you first entered the department?

A. As a deputy tax commissioner?

Q. That was your first position?

A. Yes, sir.

Q. And you have been since?

A. Yes, sir.

Q. Now, what district did you have charge of when you first entered the Tax Department? 6656

A. I first entered the Tax Department and made the assessments for 1912 in the Fourth Ward of the Borough of Queens.

Q. Where were you in business before you entered the Tax Department?

A. At 271 West 125th Street and at 380 West 125th Street.

Q. You haven't had any experience over in Queens, have you?

A. Yes, sir, I have had some, prior to the time of going into the real estate business I was employed by a law firm, from 1891 for a period of about ten or twelve years, at No. 62 Wall Street. 6657

Q. What firm was that?

A. Charles Brenner and Willis Brenner; and they had extensive dealings in Long Island City property.

Q. When after you valued the property over in Queens eight years ago, what other—where next did you operate?

A. I was transferred in 1914 to make the 1915

6658 assessment along the new White Plains Road Extension in Williamsbridge and Wakefield.

Q. And after that?

A. I was assigned in 1915 down to the Borough of Manhattan to make the 1916 and subsequent assessments.

The Master: In this district you are now in?

The Witness: Well, partially, Judge. I had the east side as well as the west side for 1916.

Q. Was some of the property in Mr. Quinn's district in your district then?

A. At no time.

6659 The Master: This property that you have been testifying about, is the Riverside holder property, is it?

The Witness: Yes, sir, the Viaduct section there.

The Master: That was right in the district in which you operated as a real estate man?

The Witness: And lived for many years, yes, sir.

Q. Who has charge now of the district on the east side?

The Master: You need not answer that; we are not interested in that.

6660 Mr. Chambers: What is that?

The Master: We are not interested in that. No use taking up this witness' time about it.

Mr. Chambers: I think we are interested to see what comes out.

The Master: I know, but I want you to cross-examine this witness as to his testimony, and not look for information as to other directions.

I don't want to keep this witness here for that 6661
purpose.

Q. Now, what rule did you go by in valuing the property?

A. It is impossible to answer as to any one rule.

Q. Well, give us all of the elements that you take into consideration?

A. Your knowledge that you have acquired from the time——

Q. That you took into consideration when you place a valuation of $165,000?

A. Yes, the knowledge that I have acquired in general from the real estate business, information 6662
that I obtained sometimes privately, other times publicly, as to sales, valuations and appraisals in the immediate vicinity; asking prices and sales and mortgages.

Q. Did you proceed on a frontage, or how?

A. On this particular property, on a frontage.

Q. On a frontage?

A. Yes, sir.

Q. It fronts on three streets?

A. Yes.

Q. How much per front foot did you figure for 133rd Street?

A. Why, I believe, and I say I believe for this 6663
reason—yes, I will testify absolutely—$280. a foot, $7,000 a lot.

Q. And how many lots did you figure here on 133rd Street, 20?

A. Pardon me. In cross-examining me now, I have no map. I am answering and it may not be accurate.

Q. You used a map, did you?

6664 A. Yes, sir.

Q. Have you anything to show?

A. I gave a memorandum that, to my knowledge, is right.

Q. Well, how many lots did you figure?

A. There would be six.

Q. And you valued them at $7,000. a lot?

A. I believe so, yes, sir.

Q. How many, are they all of equal frontage, each lot the same number of feet front?

A. On 132nd Street?

Q. 133rd Street.

6665 A. Which are you asking, 132nd or 133rd?

Q. I am sticking right to 133rd Street.

A. I believe they are, yes, sir.

Q. And how deep did you figure the lots?

A. Why, 99 feet 10, I believe, or approximately 100 feet.

Q. Extending about to the middle of the block?

A. Yes, sir.

Q. Now, on Twelfth Avenue, how much frontage did you figure?

A. At $280. a foot.

Q. And how many lots there?

A. Eight lots.

6666 Q. And how deep did you figure those?

A. About 100 feet, approximately.

Q. What valuation did you place on those, a front foot?

A. $280. a foot.

Q. Now, on 132nd Street?

A. $7,000. a lot, the same front foot.

Q. The same as 133rd Street?

A. Yes, sir.

Q. How deep did you figure those? 6667

A. Approximately 100 feet.

Q. And how many lots?

A. Six I believe.

Q. Do you recognize, looking at this Exhibit 178, Sheet 15, does that conform with the number of feet that you used on Twelfth Avenue?

A. Yes, sir.

Q. And 133rd Street?

A. Yes, sir.

Q. That is 1,250 feet on 132nd Street?

A. 150 of which is on 132nd Street, the balance is the frontage running back from Twelfth Avenue. 6668

Q. You knew what was on that piece of property, did you?

A. Yes, sir.

Q. And when you placed your valuation upon that piece of property you knew it was improved?

A. Yes, sir.

The Master: His valuation relates entirely to the land, you know, Mr. Chambers.

Q. Did you mean to take into consideration at all that there was improvements on it?

A. You are asking the Judge or me?

Q. You.

A. I said that I did know it was improved. 6669

The Master: Mr. Chambers and I asked you whether in fixing your land value, you disregarded the improvements.

The Witness: He did not so ask me, your Honor, if I recollect.

The Master: Isn't that your question?

Mr. Chambers: Yes.

6670 The Witness: If, in assessing this land I disregarded the improvements?

The Master: For the land value.

The Witness: Yes, sir.

Q. You disregarded it?

A. Yes, sir.

Q. Just as if it had nothing on it?

A. Just as of it had nothing on it.

Q. Do you remember what is on it?

A. Yes, sir.

Q. A holder?

A. Yes, sir.

6671 The Master: On which piece?

The Witness: On 1999 block, lot 1.

Q. That is the block we are talking about.

The Master: You are talking about two, aren't you, 132nd and 133rd street?

Mr. Chambers: It is one block, I am speaking about that all the time. And you so understood me?

The Witness: Yes, sir.

Q. You say it is impossible to give me the rule you used in placing the valuation on this piece of property?

6672 A. No, I can't give you, as I have already testified, as to all—I don't now drop into any technicality as to what you mean by rule. You mean the rule——

Q. I mean every element that entered into your brain in fixing your value on this property.

A. To the best of my ability I have already explained it in the previous answer.

Q. Well, I don't recall that you have.

The Master: I do. I won't ask the witness to repeat it.

Q. Did you know of any sales around in that 6673
vicinity?

A. Yes, sir.

Q. Do you remember any property?

A. I have the adjoining and abutting property, but I do not care to testify as to what it sold for, because the information that was given to me was of a private nature. I would ask the other side to give it to you, if they care to.

Q. Which property is that?

A. Lot 11, which was part of the Gas Company's property, and was sold by the Gas Company.

Mr. O'Brien: You mean you got the informa- 6674
tion from them?

The Master: You need not answer that.

Q. That was sold in 1917?

A. I believe so.

Q. That is——

A. Immediately to the east of this particular parcel which you are speaking about.

Q. Where the figures 1999 are on this page 15 of this Exhibit 178?

A. Yes, sir.

Q. How large a lot was that?

A. To the best of my recollection approximately 22 lot. 6675

Q. And you found out in 1917, did you, the price at which that was sold?

A. I knew the price before the title passed, I believe.

Q. There isn't any secret about the price, is there?

A. There was at that time.

Q. Isn't it in the deed now?

A. Not that I have ever seen it.

6676 Q. And you say that——

Mr. Ransom: I am perfectly willing, inasmuch as it appears this was a sale by the complainant, I am entirely willing to have the witness give the name of the purchaser and the price. This is a statement which has been in the hands of the defendants for some weeks or months, and I am entirely willing to state it upon the record, subject to verification from any source.

Mr. O'Brien: We don't want it.

The Master: You don't want it?

6677 Mr. O'Brien: What we want to bring out is the fact that the witness was influenced by something that was told him as to a consideration in a deed made by the complainant. That is the point, your Honor.

The Master: All right. That is enough now.

Q. Who in the company told you about this price?

A. I never testified that any one in the company gave me that information.

Mr. Ransom: By the "company", you mean the Consolidated Gas Company?

Mr. Chambers: The Consolidated Gas Company.

6678 Q. You used that, though, as one reason for fixing a valuation on lot 1?

A. No, sir, I don't believe I have altered the values since the time of the sale.

Q. Do you think the value of lot 1 has continued the same?

A. Lot one as it now exists.

Q. Well, now, will you tell us what you valued that lot 1, block 1999, at in 1916?

A. No, sir, I can't without going back to the 1916 6679
records. I could state an amount that might be subject to verification.

Q. Well, was it the same as the valuation which you place upon it today?

A. No, sir, because lot 1 in 1916 included 33 lots that it does not include now. In other words, it included that parcel which has been sold by the Gas Company to the Fifth Avenue Coach Company.

The Master: Was that the same rate per front foot front, do you remember?

The Witness: Approximately, yes sir.

Q. In 1917 what valuation did you place upon 6680
it?

A. The land I cannot answer accurately.

The Master: For the same reason, that these 33 lots were subsequently sold?

The Witness: Lot 11, in the adjoining parcel, which has been sold, was first separately assessed for the year 1918, and as my land column does not give back beyond 1918——

The Master: Is it a fair statement that the land value for the piece now in consideration of $280 a foot, I think you said, is substantially what it has been since 1916?

The Witness: Yes, sir. 6681

Q. You placed full value, did you, upon this lot 1?

A. Yes, sir.

The Master: What you considered full value?

The Witness: Yes, sir, what I considered full value.

Mr. Chambers: I would like to have them

6682 give us—we ought to have the information here—what he valued it at in 1916 and 1917.

The Master: I will not require the witness to come back. He, I think, has stated it as fully as it is required. He says to the best of his recollection it was substantially the same figure, $280 a foot, for 1916 and 1917. The tax records will show.

Q. These other lots, Lot 56——

The Master: In block what?

Mr. Chambers: Block 1998, on the same sheet 15.

6683 The Master: Of Exhibit 178?

Mr. Chambers: Yes.

Q. You placed a valuation of $7,000, you say, on that lot 56?

A. Yes, sir.

Q. How much frontage did you consider?

A. Twenty-five feet.

Q. How much?

A. Twenty-five feet.

Q. And how deep?

A. Ninety-nine feet, eleven inches.

Q. And what value did you place upon it per front foot?

6684 A. $288 a foot.

Q. That is on West 132nd Street?

A. I am testifying about the block 1998, lot 56. That is on West 132nd Street.

Q. The frontage is on West 132nd Street?

A. Yes, sir.

Q. Lot 55?

A. Same sized lot, same amount, $7,000.

Q. Same frontage?

A. Yes, sir. 6685

The Master: It is quite apparent to me, Mr. Chambers, that this witness' judgment was, and for some years has been, that lots in that section 25 by 100 are worth about $7,000 a lot. That is the purport of his testimony. Am I right, Mr. Hogan?

The Witness: Yes, sir, absolutely.

Q. Lot 55 the same?

A. Yes, sir, the same.

The Master: He said 53, 54 and 55 were the same.

Q. Lot 53 has the same frontage? 6686

A. Yes.

Q. The same depth and everything?

A. Yes, sir.

The Master: And lot 50 he said he gave a different figure for—because it was a corner lot or something.

Q. Lot 50, is that the one you placed a value of $22,000 on?

A. Yes, sir.

Q. What frontage did you take into consideration?

A. Seventy-five foot frontage.

The Master: You added $1,000 for plottage; 6687
is that the idea?

The Witness: Yes, sir.

Q. Ninety-nine feet eleven inches deep?

A. Yes, sir.

Q. What per front foot did you place upon that lot?

A. The same as the other and adjoining lots, $280 a foot.

6688 Q. On all those lots 50, 53, 54, 55 and 56, are there any improvements?

A. No, sir.

Q. They are just vacant property?

A. Vacant lots.

Q. Do you remember when you last looked at those lots?

A. March or April of this year.

Q. What?

A. March or April of this year.

Q. And there was nothing on them then?

A. No, sir; not on 53, 54, 55 and 56.

6689 Q. How about 50?

A. Now, you did not ask me that, if I got your question right the last time.

The Master: Answer it now.

The Witness: Lot 50 has an improvement on it; yes, sir. Some buildings.

The Master: Those things are apt to happen—mistakes like that.

The Witness: Pardon me.

Q. Do you remember what is on it?

A. Yes, sir; a boiler house and pumping station.

Q. And it is confined entirely to Lot 50?

A. Yes, sir.

6690 Q. There is nothing stored on 53, 54, 55 or 56?

A. If there was anything stored on it I did not treat it as an improvement. There may be coal there.

Q. Now I ask you to give me the value for all these pieces—for Lot 1 and these Lots 53, 54, 55 and 56, for 1916 and 1917?

A. The value unimproved, sir?

Q. Yes, sir.

A. Bearing in mind that it is subject to revision, 6691
that I have not before me the last figures for 1916, I assume that they are about or approximately as given for 1919.

Q. What figures have you there?

A. For Lot 50?

Q. Yes.

A. $22,000.

Q. That is 1916?

A. To the best of my recollection.

Q. And 1917?

A. Yes, sir.

Q. How about Lot 53?

A. $7,000. 6692

Q. And the rest of the lots the same there?

A. Yes, sir.

Q. That is for 1916 and 1917?

A. To the best of my recollection.

Q. How about Lot 1?

A. You are now talking about Block 1999?

Q. Yes, sir.

A. 1916 to the best of my recollection about $415,000.

Q. That is with the improvements?

A. No, sir; that is the land value.

Q. That is the whole thing without the—— 6693

A. Yes, sir, 1916, and in 1919 the parcels are of different size, although bearing the same lot number.

Q. And for 1917?

A. I believe the same.

Q. Would you say it would be fair to deduct $165,000. from that figure for 1916 and that would give the assessment on that part that was sold?

6694 A. Yes, sir.

Q. You also place a value upon Lot 1, Block 1999, with the improvements, do you?

The Master: I won't allow that question; it is not cross-examination.

Mr. Chambers: Exception.

Q. How about Lot 50? I ask the same question as to that.

The Master: I won't allow that.

Mr. Chambers: Exception.

The Master: I am limiting the cross-examination strictly to the direct-examination of these
6695 witnesses as to land values. If you want to call the witnesses later on as to the improvements, to prove value, I will let you do it.

Mr. Chambers: Don't you think the valuation of a holder built on that is land value? Is it going to be contended here that holder is a fixture?

The Master: Why, certainly, I assume so.

Mr. Chambers: Would you say the valuation of a house on a piece of property is land value?

The Master: Not in the light of this witness' testimony. He has testified to a separate valuation for land unimproved.

6696 Mr. Chambers: Now I am asking him if he placed a value on the land as improved.

The Master: Yes, and I do not allow it.

Mr. Chambers: It is to test his qualifications.

The Master: I won't allow it because I am only going to allow cross-examination on his direct testimony as to land unimproved. No,

I am not going to get into a valuation of im- 6697
provements of any kind at this time.

Mr. Chambers: Certainly no harm can come if he is allowed to answer the question that he did do it, and without saying what it was.

The Master: There is no sense in asking the question, because I won't let you go any further.

Q. As to Lots 53, 54, 55 and 56, those were not valued in any way except as vacant pieces of property?

A. Vacant land.

Q. There is no improvement valuation placed 6698
upon those, is there?

A. Yes, there is.

Q. What improvements did you find on them?

A. None, but the total value is $7,000. There is a double column, the land and the total, $7,000.

Q. The land and what?

A. The land and the total. We have two assessments.

Q. In that $7,000 is there some improvement?

A. No, sir, there is not, but I am strictly answering you according to our books.

Q. You do not value the land and the improve- 6699
ment separately, do you?

A. We do.

Q. When you get all through?

A. When we get all through.

Q. When you are through with your assessment it is one sum, isn't it?

A. No, sir. It is one sum and the total. The annual record of assessed valuation in our book contains two columns, the column for which the

6700 property would sell if wholly unimproved, and the column for which it would sell with the improvements thereon.

Q. As to these unimproved pieces of property here, 53, 54, 55 and 56, your value of $7,000 was for what it would sell for unimproved?

A. Yes, sir.

Q. What was your valuation if improved?

A. Those particular parcels? $7,000 with the improvements that were on them at that time, namely, none.

By the Master:

6701 Q. Let us get this perfectly clear. The tax books require a statement as to the value of the property not improved?

A. Yes, sir.

Q. Then in another column the value of the improvements?

A. No, sir.

Q. The value as improved?

A. The value as improved, the difference being the improvement.

Q. Then the third column?

A. No third column.

Q. There are just two columns?

6702 A. Yes, sir.

Q. In other words the first column gives your estimate of the value of the property wholly unimproved?

A. Yes, sir.

Q. The second column improved as you find it?

A. The value of the property with the improvements thereon.

Q. So if it is vacant land you enter in the

second column precisely the same amount as you 6703
do in the first column?

A. Yes, sir.

By Mr. Chambers:

Q. Do you make a list of what you find on the lots, somewhere?

A. No, sir; not unless it be in the nature of an improvement that might add a value to the land.

Q. Take lot 1, block 1999, did you make a memorandum of what improvements were on that lot?

A. Yes, sir.

Q. You did?

A. Yes, sir. 6704

Q. What did you find on there?

A. There is a gas tank on it.

Q. A holder?

A. Yes, sir.

Q. Is that all?

A. To my knowledge, yes, sir.

Q. What memorandum did you make as to what you found on Lot 50?

The Master: He also said a boiler house and something else.

Mr. Ransom: As to all this the defendants are making them their own witness.

The Master: What is on Lot 50, Mr. Hogan? 6705

The Witness: A boiler house and pumping station.

Q. Is that the only memorandum you made?

A. That is all.

Q. Do you know of any other sales of any property in that vicinity by the Consolidated Gas Company except this one which we have spoken of?

A. No, sir; not to my knowledge.

6706 Q. Did you have in mind some other sales made in that locality?

A. Why, I have in mind some appraisers there.

Q. Whereabouts? How near to this property in question?

A. Why, on the south side of 132nd Street there is a property known as the Flinn property.

Q. Is that where they built a new building there recently?

A. No, sir; there are two vacant lots there, an estate appraisal made for the estate of Flinn at approximately $14,000, which is our assessed valua-
6707 tion.

Q. On that part which was sold on this Block 1999 they have erected some structure?

A. Yes, sir.

Q. A garage, or something like that?

A. A garage of the Fifth Avenue Coach Company.

Q. Did you have in mind any other sales in this vicinity?

A. Why, I believe the Flinn estate had a piece on another block near there. I also had in mind the sale of property on the west side of Broadway, between 132nd and 133rd Streets, a block front.

Q. That is up on the hill?

6708 A. It is on the same block, on the easterly end of this block we are speaking of, Block 1999. Wait a minute, rather, it is the block to the south, Block 1998, on the west side of Broadway, from 131st to 132nd Streets, consisting of approximately 200 by 100.

Q. Do you remember the price per front foot for that or didn't you have that?

A. Why, I believe it sold for $113,000.

Q. That was fronting on Broadway, you say? 6709

A. Yes, sir.

Q. Where is Broadway, up here (indicating on chart)?

A. Yes, sir.

Q. To the right here. Is it the next street east of this?

A. The easterly end of this block shown on the diagram.

Q. It is higher here where Broadway runs north and south (indicating)?

A. Yes, sir.

Q. This is on a slight hill where you come down 6710 towards the river?

A. There is a slight grade, but Twelfth Avenue is on grade.

Q. Have you given us all the property that you have in mind that was sold in that immediate vicinity?

A. Off hand, yes, sir. I did not know I was to be a witness until now on this particular block.

The Master: In other words, you did not come here prepared to testify as an expert?

The Witness: No, sir; my subpœna was for property down at 42nd Street; that I never assessed. 6711

Q. Did you know what valuation your predecessor placed on these pieces of property?

A. Yes, sir.

Q. You had that, did you?

A. Yes, sir; I did.

Q. What was that for—1915, do you remember?

A. No, I don't remember.

Q. Have you a record of it?

6712 A. No, sir.

Q. Not here?

A. No, sir; don't know where you could find that unless in the annual record for the year 1915.

Q. The annual record for what year—1915?

A. Yes, sir.

Q. Who was he, your immediate predecessor, on these pieces of property?

A. On this particular piece, I took a district that had separate deputies, a combined district. I am not certain, but I believe it was Mr. George E. McKenna. I am not certain, but I think he had
6713 this particular book for 1915. I am not sure of that.

Q. And he had it for 1914?

A. I don't know.

Q. And 1913?

A. I don't know.

Q. And 1912?

A. I don't know.

Q. Is this book you have here in court and which you are looking at a record that goes back for several years?

The Master: He has already testified, he has got it back to 1918.

6714 Mr. Chambers: I want to know if that book goes way back.

The Witness: This is a private memorandum book that goes back as far as 1915 as to the total value only, not as to land value.

Q. It does not go back beyond that?

A. No, sir.

Q. Why do you say it is a private book?

A. Well, it is known as a field book of the Deputy

Tax Commissioners. It is in no sense an official 6715
book. It is never placed before the public for use
to my knowledge, since I am in the department.

The Master: In other words, it is your field book in which you make your memoranda and data on which you make up your report?

The Witness: Yes, on which we make up the assessed valuation.

Mr. Chambers: That makes it a public record, according to all the late decisions. I have been mixed up with them for the last five years.

The Master: Well, whatever it makes it, it is in.

6716

Q. When do you make your entry in this book?

A. For what year?

Q. For the October 1, 1918, valuation; when did you place that memorandum in that?

A. Some time between the first day of April and the latter part of September, 1918.

By the Master:

Q. He means with reference to the time of your examination of the property.

A. I cannot fix the particular date in which I put in the figures.

Q. If you looked at the property today, for in- 6717
stance, would you make your memorandum today?

A. Not necessarily.

Q. Would you make it while it was fresh in your mind, but not on the precise day that you looked at the property?

A. Exactly, unless it was something like the case of a building destroyed, or a new improvement; then, of course, we would make the memorandum at the time I was there.

6718 By Mr. Chambers:

Q. Do you receive any information from anybody whose property is assessed, do you call on them for information?

A. Sometimes.

Q. Did you call on the Gas Company for information here?

A. Yes, sir.

Q. What information did you get?

A. None.

Q. Did they furnish you any?

A. They furnished the department a copy—par-
6719 don me—I don't know whether they did or not. We received through official channels,——

Q. First of all, tell me what information you called on them for in regard to this particular piece of property?

A. To ascertain the price paid for the piece of property purchased from that company by the Fifth Avenue Coach Company.

Q. Then what did they do about it?

A. The official that I interviewed told me it was more or less of a private matter, and they didn't care to give out the information at the
6720 present time.

Q. And so you didn't find out that way?

A. No, sir.

Q. But you did find out?

A. Another way.

Q. Is that the only information you called on them for?

A. That is the only time I ever called upon the Gas Company relative to gas matters.

Q. In fixing your valuation on these pieces of

property did you examine their report filed with 6721
the State Tax Department?

A. Yes, sir.

Q. In that report there were some figures in regard to this land, were there not?

A. There were.

Q. And you consulted that and used that, did you not?

A. I didn't use that, no, sir.

Q. But you looked at it; you found out what it was?

A. Yes, sir.

Q. Do you remember where you got that report 6722
from?

A. Yes, sir.

Q. Where?

A. In our office.

Q. You have a copy, do you?

A. No, sir. There is a copy passed along for the use of each deputy, after which it is returned to our superior officer, the deputy in charge.

Q. And that is the annual report made by the Consolidated Gas Company to the New York State Tax Department for franchise tax purposes?

A. To the best of my knowledge and belief it is, 6723
yes, sir.

Q. Did you consult any other report made by the company to any other tax department?

A. Not to my knowledge, no, sir.

Q. Did you take occasion to look at their income tax report to see if there was anything in that?

A. No, sir.

Q. Do you think of any other report that they made to any department that you consulted?

6724 A. Not to my memory at the present time, no, sir.

Mr. Chambers: That is all.

CROSS-EXAMINATION BY MR. O'BRIEN:

Q. Mr. Hogan, you said you were in the real estate business before you become a deputy tax commissioner?

A. Yes, sir.

Q. And for seven years?

A. Approximately.

Q. And that was in Long Island City?

A. No, sir.

Q. Where?

6725 A. At 271 West 125th Street, and at 380 West 125th Street, and for a year or two with a branch office on Westchester Avenue in the Bronx.

Q. For whom did you work?

A. Myself.

Q. You had your own office and conducted your own business?

A. Yes, sir.

Q. Sold property and bought it?

A. Yes, sir.

The Master: As a broker?

The Witness: As a broker and——

The Master: As a trader too?

6726 The Witness: As a trader too in a small way.

Q. Did you ever buy or sell any property west of Amsterdam Avenue in this neighborhood?

A. No, sir, not to my knowledge.

Q. Did you ever have charge of the rentals of any property west of Amsterdam Avenue in this neighborhood?

A. Not west of Amsterdam Avenue, no, sir.

Q. Will you tell us something about the topog-

6727

raphy of that part of the city where this holder is located?

The Master: What in particular do you want?

Mr. O'Brien: I want him to describe the territory.

The Master: Whether it is hilly, or whether it is residential, or whether it is near the river, or whether the viaduct is there?

Mr. O'Brien: All of that.

The Master: Generally describe the location.

The Witness: The parcel known as Block 1999, Lot 1—do you want me to testify as to 6728 one piece or all.

Q. Describe all of it?

A. It is all practically the same. It lies in what s known as Manhattanville Valley, on grade with Twelfth Avenue as established at the present time. A large part of the vicinity consists of vacant roperty. The properties between the west side of Twelfth Avenue and the railroad tracks are more r less occupied by two story buildings as beef and rovision houses, and hay and feed. The side treets have garages and stables, and the property radually slopes uphill to Broadway, which is con- 6729 iderable higher than Twelfth Avenue. Is that about n general what you want?

Q. The property also slopes up towards the north, oesn't it?

A. Not to my knowledge.

Q. Well, you know 137th Street, don't you?

A. 137th Street?

Q. Yes.

A. Yes, sir.

6730 Q. That is on a level with the viaduct, isn't it?

A. Approximately.

Q. Practically?

A. Yes, sir.

Q. There is a viaduct which carries Riverside Drive over this Manhattan Valley, as you call it?

A. Yes, sir.

Q. And that viaduct is above the ferry houses and above the structures on the river front?

The Master: Well, it is not above the ferry houses.

The Witness: It is above what is known as
6731 the bed of Twelfth Avenue.

The Master: The ferry houses are west of that.

Q. The ferry houses are to the west of that?

A. West of Twelfth Avenue.

Q. And provision houses and other such concerns are along the river front of Twelfth Avenue?

A. Yes, sir.

Q. And then on the east side of Twelfth Avenue are other concerns of that kind?

A. About that type.

Q. The block bounded by Manhattan Street on the south and Twelfth Avenue on the west is not
6732 very much improved, it has a number of these two or three story structures?

A. Manhattan Street and Twelfth Avenue, east of Twelfth Avenue?

Q. Yes, sir.

A. Yes, sir. It also has a number of car barns and such things. There is the Slosson Decker Farms Dairy station.

Q. That is on the south side of Manhattan 6733
Street?

A. Yes, sir.

Q. And that is the milk center?

A. Milk station.

Q. A building of about six or seven stories?

A. Approximately, yes, sir.

Q. Well, on the north side of Manhattan Street are these old structures that you have spoken about?

A. Yes, sir.

Q. They have been there a number of years?

A. Yes, sir.

Q. There hasn't been much improvement upon 6734
that particular block?

A. No, sir.

Q. The viaduct runs immediately to the west of the property that you have been describing of the complainant where the holder is?

A. Yes, sir.

Q. And the holder is erected upon that lower level?

A. Yes, sir.

Q. And the viaduct is how many feet above the ground of the complainant company?

A. I don't know accurately, I should say about 100 feet. 6735

The Master: Is it as high as that there?

Mr. O'Brien: More than that, I think.

The Witness: It is not more than that; it may be less, 75 feet or so.

Q. It is about on a level with the roof of the Slawson-Decker Milk Company's building, isn't it?

A. Well, I never compared it that way, because

6736 the Slawson-Decker building is considerably removed from the viaduct.

The Master: Your judgment is that it is probably 100 feet?

The Witness: Not more than that.

The Master: Above the level of complainant's property that you have described this morning?

The Master: Above the street level?

A. Yes, sir.

Q. And then this valley or gulley runs up toward Broadway on the east, and then slopes up toward

6737 the property on 135th street?

A. Only on Broadway, not 12th avenue. Broadway runs up hill.

Q. Well, does the hill begin to run up to the north?

The Master: Wait a minute. Let us get this clear. The witness has already stated that 12th avenue does not run up grade. Broadway, to the east of 12th avenue, does run up grade. Which street do you refer to?

Mr. O'Brien: I am talking about the property immediately to the north of the complainant's property.

6738 Q. There is a slope there?

A. Not immediately north of the complainant's property, no, sir.

Q. You know where Hopper's yard used to be?

A. Yes, sir.

Q. That is just to the north?

A. Yes, sir.

Q. Hopper the contractor?

A. Yes, sir. 6739

The Master: On 12th avenue?

The Witness: No, sir, 134th street east of 12th avenue.

Q. Used as a yard for storing wagons and materials?

A. Yes, sir.

Q. Is that still there?

A. Yes, sir.

Q. At the north of Hopper's property, there is a slope upward to 134th street?

A. Hopper's property faces on the south side of 134th street east of 12th avenue. 6740

Q. The property north of 134th street begins to run up the hill side?

A. There is a large hillside, but it is abrupt, you can't climb up or walk up it.

Q. It runs up abruptly?

A. I would not put it that way for our purpose, assessing. 12th avenue ends there absolutely.

Q. Ends there, and that is about 100 feet below the level of the next street to the north?

A. Which is Riverside Drive——

Q. Running east and west?

A. Well, 135th Street.

Q. Then over on Broadway there is also a viaduct 6741 carrying the subway across this valley?

A. Yes, sir.

Q. And the subway structure is erected thereon?

A. Yes, sir.

Q. There are garages through there, it is a garage section?

A. Yes, sir, fast becoming so.

6742 Q. And the center is more or less a business section in that immediate neighborhood?

A. Yes, sir.

Q. It is not practicably usuable for residential purposes?

The Master: You are going to get pretty far a field there, Mr. O'Brien. You better confine yourself pretty close to that corner, because the entire character of the property there changes so rapidly, within a block or two, that you will be in trouble if you don't confine yourself pretty closely.

6743 Mr. O'Brien: The point is this, I might as well state it here. He is asked to assess it for ordinary purposes. Well, all the purposes for which that property may be used, it is made willy-nilly on the part of the witness, that is the point.

The Master: I know your point, try to develop it. What I am calling your attention to is that you ought to confine the witness pretty closely to that particular section west of Broadway.

Mr. O'Brien: Well, let us get it definitely and right.

6744 Q. As you walk along Manhattan Street from Broadway toward the river, you have a block that is not rectangular in shape, but irregular?

A. Yes, sir.

Q. And that block is covered on Manhattan Street, on the north side of Manhattan Street, by these low two or three-story structures?

A. That is right.

Q. And wooden structures, one story high?

A. Little buildings on the north side of Manhat- 6745
tan Street.

The Master: West of Broadway?

The Witness: West of Broadway, from Broadway on, west of Broadway on the north side of Manhattan Street, from Broadway to the junction of 127th Street at the point, there is practically a vacant property with nothing on it but one story sheds.

Q. Yes, and it has been that way a number of years?

A. For many years.

The Master: I think it would be well, Mr. 6746
Hogan, to put on the record the relation of 132nd Street to Manhattan Street. I know it, but the record don't know it, and when it goes to the higher court it might be well for the judges who have to consider the record to have in mind the general lay-out of the land there.

Q. I hand you a piece of paper and pencil, Mr. Hogan, and ask you to try and draw us a diagram of that immediate neighborhood around the complainant's property, that will give us from Manhattan to the north?

The Master: Take the northwest corner of 6747
Manhattan Street and Broadway, which is the subway station, isn't it?

The Witness: Northwest corner, no, sir.

The Master: Manhattan Street and Broadway? I mean the subway is at the junction of Manhattan Street and Broadway?

The Witness: Yes, but the entrance is on the south side of the street.

The Master: Yes, I remember that. Take

6748 the northwest corner, and run along Manhattan Street to Twelfth Avenue. That is a diagonal block, is it?

The Witness: Yes, sir. That is what I was trying to describe. What I was trying to describe.

The Master: The streets run very irregular through there, don't they?

The Witness: May I be permitted to look at this little sheet for a moment?

Mr. O'Brien: I would like to have you just give us it from your memory.

6749 The Master: No, don't let us waste time on that. I see that you have in this file book of yours a map of that section?

The Witness: Yes, sir.

Mr. O'Brien: I would like to test his memory.

The Master: I don't want his memory, because we are not examining this witness to find out whether he is telling the truth or not.

Mr. O'Brien: Well, we are not going into the truth of it.

The Master: You agree with me?

Mr. O'Brien: I am testing his knowledge of values and knowledge of the territory and so

6750 on.

The Master: You agree with me that it is simply a matter of getting the location correct. The Master will rule that his memory of drawing the location, based upon the Master's own knowledge of the section, is rather unfair to the witness. The streets are so irregular and so cut up, that the Master rules that the witness

had better refer to the map he has and give us a correct description of it. 6751

The Witness: At the same time I am perfectly willing to try it.

The Master: I know you are, but we want to save time. Get the corner of Manhattan street and Broadway. Where is that corner?

The Witness: Right here is the section.

The Master: What I am asking you to do is to locate 132nd street with reference to it. As I understand it Manhattan street runs in a rather northwesterly direction, does it not?

The Witness: Yes, sir.

The Master: Across Manhattan Island? 6752

The Witness: Yes, sir.

By the Master:

Q. It meets Broadway, which runs, generally speaking, north and south?

A. Correct.

Q. That is not the true compass, I know, but generally speaking, north and south?

A. We use it so.

Q. West of Broadway and running north and south is 12th avenue?

A. Yes, sir.

Q. Manhattan avenue, as it extends over to 12th avenue, meets 132nd street? 6753

A. Manhattan street.

Q. And Manhattan street as it continues in its course toward the river, meets at a point 12th avenue and 132nd Street?

A. Yes, sir.

Q. From there on the streets run rectangularly

6754 and in order up to 137th street on this section of map you show me?

A. Yes, sir, 135th street.

Q. 135th street and 12th avenue?

A. Yes, sir.

Q. So that again on the corner of 12th avenue and Manhattan street and 130th street, we begin to have the rectangular blocks, generally known on Manhattan Island?

A. Yes, sir.

Q. The property of the Consolidated Gas Company is on 12th avenue?

6755 A. Yes, sir.

Q. Between 132nd and 133rd street on 12th avenue?

A. Yes, sir.

Q. It is about three blocks north on 12th avenue and one block west of Broadway from the point, or a little more than one block from the point that Mr. O'Brien is now talking about?

A. You mean Manhattan street and Broadway?

Q. Yes. Now, is there any substantial difference between the character of the neighborhood between the corner of Broadway and Manhattan street and 132nd street and 12th avenue?

6756 A. Oh, there is, yes.

Q. In what respect; is it better or worse on 12th avenue and 132nd street than Broadway and Manhattan street?

Mr. O'Brien: In what respect, your Honor?

The Master: As to values.

A. I consider that the property nearer to Broadway is of much more value than the property between 132nd and 133rd street and 12th avenue.

Q. Now, as to the character of use, there is considerable difference between the corner of Broadway and Manhattan street and 12th avenue and 132nd street and 133rd street, is it not? 6757

A. Yes, sir.

Q. Over at Broadway and Manhattan street there is a row of retail stores and dwellings?

Mr. O'Brien: Not on that corner, no.

The Witness: On the west side of Broadway, the south corner, is——

Mr. O'Brien: At Manhattan Street?

The Witness: Yes; is a business section. There is a saloon and stores on the south side of Manhattan street over on the westerly side of Broadway, on the adjoining corner, namely, the northwest corner of 127th street, there is a six-story apartment house. 6758

Q. You are getting south now, of Manhattan street?

A. Yes, sir.

The Master: The point I wanted to make, Mr. O'Brien, is that there is a very great difference between that section there where the subway station is and over where the holder is. That is a busy corner, is it not, Mr. Hogan?

The Witness: Yes, sir. 6759

The Master: It is a transfer point?

Q. The Third Avenue car line runs down Manhattan Street?

A. Likewise the Bronx cars.

Q. There are Broadway cars that come up Broadway and turn over to the ferry at the Fort Lee Ferry?

A. Yes.

6760 Q. There are other cars turn east and run up Amsterdam Avenue, so that it is a very busy corner, a very active corner, and that is not so as to Twelfth Avenue and 132nd and 133rd Streets?

A. Absolutely different property.

By Mr. O'Brien:

Q. Now, if you have the diagram before you on the front page of your file book, Mr. Hogan, will you tell me what structures are on Block 1996, if you remember them?

A. Testifying from memory, on the corner——

Q. That is a block bounded by 130th Street on
6761 the north?

A. 129th——

Q. 129th on the south; Manhattan Street on the southwest and Broadway on the east?

A. Yes, sir.

Q. Now, what buildings, as you recall it, are on that block?

A. Commencing at the point or junction of Manhattan Street and 130th Street and Twelfth Avenue, there is a small two story building used as a saloon right on the point; in the rear is used as sort of a garden; the abutting property to the east has been vacant and has been used as a storage place for a
6762 long while for the Department of Street Cleaning carts; the next easterly parcel is the 42nd Street and Manhattanville stables, old car barns; the adjoining property, I believe, is the Borden's Condensed Milk property; there is a single lot in there, a 25-foot lot owned or used as a garage; then comes a small parcel about 50 feet with some old frame buildings on it; then comes another parcel that runs through from 129th Street to 130th Street, contain-

6763

ing a brick building on the rear and a frame building on 129th Street side; the adjoining parcel to the east is the Ballantine people, the ink factory; and then on the Broadway corner, namely, the northwest corner of 129th Street and Broadway, is Farrell's coal yard, that small two-story brick building; the balance vacant. Going up Broadway——

Q. You mean the yard formerly owned by the William Brennan Company?

A. Owned by the William Brennan Company, yes, sir. Adjoining the land owned by the Brennan Company, I believe, is a parcel about 75 or 6764
100 feet front covered with a modern type of storage house, furniture storage warehouse; adjoining that I think there is a single lot 25 feet rather badly hemmed in; the next corner, being the southwest corner of 130th Street, is an old factory building converted into a garage. Going down——

The Master: Don't go any further. We are on that block.

The Witness: Well, the same block, going back on it.

The Master: All right.

The Witness: The same block, going back on 6765
130th Street immediately adjoining this factory on the corner, I believe is—there are several vacant lots about 100 feet, about 100 feet used as storage for the Clover Farms milk concern and in general small buildings of the ink factory facing on 129th Street.

Q. Frame buildings?

A. Yes, sir, frame buildings. And the stable buildings over to the west, which run from Man-

6766 hattan Street through to 130th Street of the car companies, to the best of my recollection.

Q. Is the block just to the north of that bounded by 131st Street on the north, 130th Street on the south, Broadway on the east and Twelfth Avenue on the west, occupied by buildings of the same general character, or is this vacant?

A. To the best of my recollection, commencing at the northwest corner or the northeast corner of Block 1997, Twelfth Avenue and 130th Street, I believe the land is vacant. Going east on 130th Street I think there is a parcel about 100 feet, prob-
6767 ably 75 feet of which is vacant, the balance has a two-story brick building with old stables in the rear; adjoining that is the Department of Street Cleaning stables; adjoining that, going east, is the old Murray Hill Sash, Door & Blind building, that was destroyed by fire and now rebuilt and occupied by Oppenheimer, the butcher; adjoining that on the east is a row——

Q. They are occupied for storage?

A. Yes, sir, storage.

Q. Or a slaughter house?

A. Not as a slaughter house, but storage, to my recollection. Adjoining that to the east is a row
6768 of old buildings about four stories high that set below the level of the street, practically worthless as regarding the ground floor, very old and dilapidated buildings.

Q. How low is the level of the ground below the street level?

A. This particular point I am speaking of?

Q. Yes.

A. Probably six to seven feet; may be not that.

Adjoining that is a parcel, vacant, and adjoining 6769
that is Broschart and Braun. They were metal ceiling and cornice manufacturers, who have practically gone out of business, the last I recall passing there, and the place was vacant.

Q. A two structure or five?

A. Two. Adjoining that, if my memory serves me rightly, are low, small buildings. I am taxing my memory somewhat.

Q. You have a pretty good memory, haven't you?

The Master: Haven't we had enough of his memory?

Q. They are sheds, aren't they, or shacks? 6770

A. If not sheds, they are not a modern type of building, and in most of these cases the improvements themselves have a small value, and we have placed a small value on them.

Q. In the next block is the general occupancy the same, the block bounded by 131st street on the south and 132nd on the north?

The Master: To cut it short, is there any modern building in the next block?

The Witness: The next block, the only modern type of building—I am not sure whether it is on this block or the next block, but I will say the only modern property is on 6771
the south side of 132nd street, about 150 feet west of Broadway there is a 50 foot, six-story apartment house; the rest of the block has gone over to mercantile or manufacturing purposes or vacant.

Q. And there are some yards where the wagons are stored?

A. Yes.

6772 Q. Junk is heaped up?

A. For storing building material, such as planks, scaffolding, and so forth.

Q. And any of it got junk and rubbish around and things of that kind?

A. Oh, yes, lots of it there.

Q. And you know that the zoning maps and resolutions or the ordinances have this an unrestricted area?

A. Yes, sir.

Q. And that has been so for two years?

A. Approximately.

6773 The Master: That is apt to make it more desirable for certain kinds of businesses, then, isn't it, Mr. Hogan?

Mr. O'Brien: Now, your Honor, I don't think——

The Master: You have opened the door.

Mr. O'Brien: No, I haven't opened the door. I have put a fact on the record here.

The Master: Well, I will get it on the record too. This is unrestricted area under the zoning ordinances of the city?

The Witness: Yes, sir.

6774 The Master: And this gives it the possibilities that it may be of particular value for certain classes of business that cannot go elsewhere?

Mr. O'Brien: I must object to that, your Honor.

The Master: Your objection is overruled.

Mr. O'Brien: Your deduction you can make yourself, but I don't think you ought to show it through the witness's mind into the record.

The Master: The objection is noted and over- 6775
ruled, and exception. If the witness can answer he will say so. If the witness cannot answer, he will say so; if I am wrong about it, he will say so.

The Witness: I can't answer it in a definite way, your Honor. That is one of the elements that makes it hard to assess. It is disputed by the best real estate interests, whether it is beneficial or detrimental to that neighborhood.

The Master: The claim is made by some people that it may be a benefit?

The Witness: Yes, sir. 6776

The Master: And that is the best you can say about it?

The Witness: Yes, sir.

The Master: And other real estate experts think it is a detriment?

The Witness: Yes, sir. In other words, the placing of that restriction practically took it for the time, out of the line as regarding residential sections and apartment houses. The other sections of the city being restricted, simply has driven those seeking garage sites up to Manhattan, who would not otherwise go there, in my opinion, if they could locate fur- 6777
ther down.

The Master: Now we have on the record that there is a zoning ordinance, and what the witness' judgment is as to what effect it has there.

Mr. Ransom: Have we the date it took effect?

The Master: He said 1915, July 26th, I think, 1915.

The Witness: I did not say any date, your

6778 Honor, but I think it was about 1916, it is about two years.

The Master: The Master will state on the record that he is quite sure it was 1915.

Q. Has there been much action in the real estate market in this immediate neighborhood in the last three years?

The Master: You mean much activity up there?

The Witness: Well, yes, if you compare that activity with the inactivity of previous years.

Q. It was dormant for a long time?

6779 A. For a long number of years.

The Master: That is so of all Manhattan real estate, was it not?

The Witness: Yes, but particularly so. I believe in Manhattanville valley.

Mr. O'Brien: You make a good witness, your Honor.

The Master: There is no use monkeying around with this kind of testimony, because I am going to get it straight.

Mr. O'Brien: Well, I don't know whether I got that last question fully. Let us get the fact, the whole truth.

6780 The Master: That is what I am going to do here. Every time you approach a question that throws any doubt in the record, I am going to make the record clear.

Mr. O'Brien: Well, don't show too much zeal against me, your Honor, in the record.

The Master: The minute you bring out there was no activity in this locality, I will bring out

there was no activity anywhere for a number of 6781
years.

Q. There has been more activity——

Mr. O'Brien: Well, there has been very little activity in two generations around the gas works, if you want my opinion, your Honor.

Q. Now, what sales have actually taken place in any of these blocks that you have mentioned, north of Manhattan Street and west of Broadway?

A. I might state that I did not come here prepared to give you the sales. We will now talk from memory. You only want sales?

Q. Sales, yes. 6782

A. The property that I have already testified to, being the gas company's. Over on old Broadway——

Q. I said west of Broadway?

A. Pardon me, west of Broadway, west of Broadway.

Q. Yes.

A. Well, I would have to confine myself practically exclusively to the one sale, offhand.

Q. Well, we know that you——

The Master: I have already brought out, Mr. O'Brien, that this witness did not prepare himself to come here as an expert and collect 6783
the data that might otherwise be available.

Mr. O'Brien: Oh, I know the witness came flush from a summer vacation.

The Witness: You might add, too, that I came in response to a subpœna that asked me to bring books and data about property which I never assessed, consequently I did not know I was to be used.

6784 Q. Oh, we understand that, Mr. Hogan. And did they send you a telegram, too?

A. They did, yes, sir.

Q. And what did the telegram say?

The Master: You need not answer that.

Mr. O'Brien: Just a minute, I want to have that on the record, your Honor.

The Master: You already have it on the record.

Mr. O'Brien: Not this telegram. I want this telegram that was sent to the witness.

The Master: How does that affect the record? If the complainant company has been unfair to
6785 this witness, it does not change the character of the testimony. This witness is giving you the best of his recollection on these points, he is telling the truth. He may be as angry as he can be toward the gas company, but he is telling us the truth here.

Mr. O'Brien: I did not ask him the question for that purpose, your Honor.

Mr. Ransom: Well, I do.

Mr. O'Brien: I did not ask him the question for that purpose. I asked him for the purpose of having it straight on the minutes of this
6786 trial, so that at the proper time we may make a résumé of all of these actions on the part of the complainant company, the method by which they drag these witnesses into court.

Mr. Ransom: I want to make a statement.

The Master: Just one minute. I am here to determine, if I can, the fairness or unfairness of the rate fixed by the State for the sale of gas, am I not?

Mr. O'Brien: Of course you are, your Honor. 6787

The Master: How will it help me to determine the facts one way or another, to have spread on this record, or how will it help the Court reviewing the record?

Mr. O'Brien: Concededly it won't affect the issues in this case.

Mr. Ransom: We can simplify this very much.

Mr. O'Brien: Concededly, but it should be made a note of, your Honor, because you are an officer of the Court, as I am.

The Master: Let us hear what Judge Ransom has to say. 6788

Mr. Ransom: The first I knew about any telegrams was the mention of them in court yesterday. I don't know anything about them now except in the most general way, from information which is given me by one of my associates, anything about what was in those telegrams, and I am entirely willing to have such telegrams put in the record.

The Master: Let us spread the telegram upon the record. Read it, if the witness has it. It doesn't help me or anybody else.

Mr. Ransom: I don't think it does at all. 6789

The Witness: I received a telegram on August 22nd, on my return to my house; it was in the hands of the janitor, no one being home in my apartment to receive it, "Shall call on you tonight. Important matter. C. J. Kane."

Mr. O'Brien: I understand that Mr. Ransom repudiates any responsibility on the telegram?

6790 The Master: Judge Ransom has made the statement on the record.

Mr. O'Brien: Does that apply, Mr. Ransom, to the way Mr. Quinn was dragged out of the mountains?

The Master: Judge Ransom said yesterday it was all done without his knowledge and approval.

Q. Go ahead, Mr. Hogan, tell us just what sales have actually taken place?

The Master: He has said that west of Broadway he must limit himself to the sale of the gas company, as far as his recollection goes
6791 now. Go to the next question.

Q. Do you think there were any other sales?

A. Yes, there were. You are asking me the question, so give me time to think. There was a foreclosure sale, if it is of any use to you, south of Manhattan Street, of a different kind of property, an apartment house. It was foreclosed by the Harlem Savings Bank for about $75,000.

Q. That is the south side of Manhattan Street?

A. Yes, sir.

Q. That was not the territory I asked you about.

A. But you have gone south of Manhattan Street.

6792 It was on the south side of this property.

Q. It was bought in by the mortgagee?

A. Yes, sir.

The Master: We will get through quicker if you will confine yourself just to Mr. O'Brien's questions. If you do not know any other sales west of Broadway, say so.

The Witness: No, I do not know any at the present moment.

Q. Would the same answer come from you if I 6793
extended the question over the period of the last fifteen years?

A. I would not be in a position to answer.

Q. You have operated, have you not, in that vicinity?

The Master: You need not answer that.

A. I have not kept any record of that period of time in that territory.

Q. What is your best recollection?

A. There have been sales there, but not very many, to the best of my recollection.

The Master: It has not been a very active 6794
section of the city in the last ten or fifteen years, has it?

The Witness: No, sir; it has not. It has been absolutely dormant.

Q. Did you write the letter or did the department write the letter to the complainant company asking them to tell you how much they got for the property sold the Fifth Avenue Coach Company?

Mr. Ransom: I object to that question.

The Master: You need not answer that question, because the witness has already testified he went there and saw the officer.

Q. What officer did you see? 6795

A. Well, to the best of my recollection it was one of the vice presidents.

Q. Down in 15th Street?

A. Yes, sir.

The Master: Do you remember his name?

The Witness: Why, not off hand. It was a Mr. Gawter, I believe, or Gawtry.

Mr. Ransom: G-a-w-t-r-y.

6796 Q. You are not mixing that up with Carter now?

A. Not to the best of my recollection.

Q. You have met Mr. Carter, this gentleman here (indicating)?

A. I have never had the pleasure of an introduction.

Q. And he told you——

The Master: Who is "he" now?

Mr. O'Brien: Mr. Gawtry.

The Master: He said he would not disclose it. Let us get to the next question, Mr. O'Brien. We have covered these things.

6797 Q. Do you use the same unit of value east of Broadway?

A. I should say no. Any particular street that you want east of Broadway?

Q. Well, you are referring now to your field book?

A. Yes, sir.

Q. This field book, by the way, is a tentative statement of valuations that you——

The Master: You need not answer that. It is fully covered as to what this field book is. You need not go into any other questions about it.

6798 Q. Do you ever change the figures that you put down in the field book afterwards?

A. Frequently.

Q. Will you state what the unit of value is east of Broadway?

A. What street?

Q. On any one of the streets from Manhattan Street north?

A. On 129th Street between Broadway—running east of Old Broadway—I have a unit of value of

$180. a foot, or $12,000. a lot. On 130th Street, be- 6799
tween Broadway, running east——

Mr. Ransom: Just a moment on this. I do not know that this is within the scope of the direct-examination.

The Master: I will allow it.

The Witness: On 130th Street, running from Broadway east to Old Broadway, I have a unit of value of $400. or $10,000. a lot. On 131st Street I have approximately $400. as a unit or $10,000. a lot.

Then there is no intervening street until 133rd Street, the property being taken up by 6800
the old Manhattan College site, running from 131st Street to 133rd.

Q. Then that territory north of Manhattan Street and east of Broadway is devoted to business purposes to a large extent now?

A. Business and residential. It is a sort of mixed territory, very mixed.

Q. It is in an unrestricted zone under the resolutions of the Board of Aldermen?

A. Yes, under the present resolution it is unrestricted.

Q. It is used for residential purposes, flat houses or—— 6801

A. Tenements, old iron foundries. It is a very much spotted territory, parts of it are good and 100 feet away would be very bad.

The Master: It is just what I said before, you have got to confine yourself very closely around that section, it changes very rapidly.

Q. In making your assessment, Mr. Hogan, for

6802 the year 1919, did you take into consideration the existence of the viaduct?

A. Oh, yes, sir, in the sense that the viaduct was there and has been there for a number of years past.

Q. Did you take into consideration the zoning resolutions?

A. Yes, sir.

Q. Did you take into consideration the present trend of the property?

A. Yes, sir.

Q. Did you hold the existence or the presence of the viaduct there as a disadvantage to the improve-
6803 ment of the property of the complainant?

A. Well, only in the sense that the viaduct was there when I first assessed it, and I saw no reason to change the value as I found it.

Q. Well, you were influenced to some extent, Mr. Hogan, by the assessments of the previous years?

A. Not entirely, no, sir.

Q. Not controlled by it, but you were influenced by it?

A. To a certain extent.

Q. You have various rules and regulations covering the work of assessors in the Tax Department?

A. Yes, sir.

6804 Q. They spread before you general information as to the measuring of values?

Mr. Ransom: I object to the question as too indefinite.

The Master: I will allow it.

Q. Have you got a set of rules?

A. We have. Each year as we go into the field we are invariably given oral instructions, and usually followed by a letter, calling our attention to

various things that might be then existing, such as 6805
for instance the prohibition question this year, which might enter or might not enter into a change of values of certain property.

Q. The question of rentals has a serious effect upon your valuations of improved property?

A. In the minds of some people, and not always in the minds of others; it is a debatable question at all times.

Q. You know as a matter of fact that applications for reduction before the Tax Commissioners are frequently successful by showing rentals to be much lower than they were generally expected to be? 6806

Mr. Ransom: I object to the question. That of course is a question on the value of improvements, concerning which this witness has not been interrogated.

Mr. O'Brien: Perhaps counsel has not grasped the purpose of the question.

The Master: I will allow it, because the ability to improve the property bears upon its value as unimproved property. Am I correct about that, Mr. Hogan?

The Witness: Yes, sir. If the Commissioners are satisfied that the property does not bring in a sufficient rental to justify its value as 6807
placed upon it by the deputies they will reduce it from time to time.

Q. They are influenced then by the rentals, to that extent?

A. I assume they are; I don't know exactly——

Q. You deputies take into account the rentals?

A. Yes, sir.

Q. Did you go into the question of the rentals

6808 of any of this property north of Manhattan Street and west of Broadway?

A. Yes, in a general way. I only know of rentals, if you wish them, of one or two isolated pieces in there that would tend to hold the value of the land as it exists at the present time. The character of the neighborhood is such that the rentals fluctuate. There is no fixed section like an apartment house section where the rentals would be so much a room. There is no fixed type of improvement, where the rentals could be balanced one against another. Many of the buildings are dilapidated, and figure
6809 no rental value.

A. A great deal of the property west of Broadway and north of Manhattan Street is of that character?

The Master: You need not answer that, it has already been asked and answered.

Q. Did you say you only made a note of two where there was any specific rental?

A. No—I said that, and without going and searching through my books it would be impossible for me offhand to give you any rentals there. I had no idea I was going to be asked these questions and did not come prepared.

6810 Q. Are the rentals merely nominal where there are carts, and lumber, and such things stored?

A. Yes, sir, they are merely nominal. I should say that the rental does not represent the value of the property where such things are stored.

Q. Still, you took that into consideration as representing a lack of demand for the property?

A. Yes, sir.

Q. Were you influenced at all by the proximity 6811
of the river?

A. Somewhat.

Q. The complainant company does not own any property in this neighborhood on the river?

A. No, sir.

Q. There is no water front that it has that might be used in conjunction with this property on the east side of Twelfth Avenue, is there?

A. Not that I know of.

Q. Would you state to what extent the proximity of the water front has influenced your value?

A. No, only indefinitely, in that Manhattan 6812
Street is an outlet to that section of the city. It is the ferry terminal, it is the terminal of the railroad, there is activity there of some kind or another, even though it is commercial activity.

Q. But Manhattan Street is five blocks south of the complainant's property?

The Master: No, it is not.

Mr. O'Brien: Four and a half.

The Master: No it is not. At the junction of Twelfth Avenue and Manhattan Street it is just three blocks to 132nd Street.

The Witness: From the 132nd Street corner, 6813
it is but two blocks.

The Master: So that the north end of the property is only three blocks away.

Q. Was there any application made by the complainant for a reduction of this assessment?

A. For the year 1919?

Q. Yes.

A. I believe there was. I have a note here that would signify that there was an application made.

6814 Q. Does that note indicate what the company claimed the property was worth in making the application to have it reduced?

A. No, sir.

The Master: You don't know whether it applied to the land value or the improvement value?

The Witness: No, sir.

Q. Does the assessment show the improvements also?

A. This is the assessment—the total for 1919 does, yes, sir.

6815 Q. You mean if there is a holder on the property—did you assess that too?

A. Yes, sir.

Q. So you cannot say from the memorandum that you have before you whether the company attacked either or both of the elements, the land or the improvements?

A. No, sir. I cannot accurately state that. All I can state is that there has an application been filed against that particular block and lot number, and I have a memorandum to that effect.

Q. What is the memorandum?

6816 A. The letter "C", meaning that there was an application.

The Master: That means complaint?

The Witness: No, it means that there has been an application filed, and the action of the Commissioners was that they confirmed the assessment, "C" standing for "Confirmed".

Q. Were you present at any hearing on that subject?

A. To the best of my recollection I was not.

Q. Do you know whether there was a hearing? 6817

A. I believe there was, yes, sir.

Q. An oral hearing?

A. An oral hearing.

Q. You were not subpœnaed to bring here the application for a reduction of the assessment?

A. I was subpœnaed to produce nothing that I had any control over. The subpœna served on me by error mentioned other properties which I have never assessed.

Q. Then you are here, so far as this particular property is concerned, without a subpœna?

A. Yes, sir, to hold over on the request of his 6818
Honor to attend here this morning.

Mr. Ransom: I have the application here, if you wish it, relating to improvements.

Q. Mr. Hogan, have you ever testified as a real estate expert in any litigation?

A. Not as an expert, no, sir.

Q. In any condemnation proceeding?

A. No, sir.

Q. In any *certiorari* proceedings?

A. Yes, sir, I have been called to the stand to explain certain figures in a book in *certiorari* proceedings.

Q. Examined as an employee of the city? 6819

A. As an employee of the city, to identify certain books and give explanation of certain figures.

The Master: And justify your figures?

The Witness: Well, they never went into that; simply asked me and let me go.

Q. Formally called upon to establish the assessment?

A. The fact that I was the man who made the

6820 assessment, and that those figures were there. I think I was two or three times in the Supreme Court.

Q. You said something about working in Long Island City.

The Master: We will not move over to Long Island City.

Q. Was that real estate work?

A. Yes, sir.

The Master: He has told us about that.

Q. What was this concern you were with in Wall street?

6821 The Master: You need not answer that.

Q. Was it a real estate concern?

The Master: He need not answer that. It is already covered. It was a law office and had a lot of work over in Long Island City.

Q. When you first went into the tax department you were assigned to Queens, were you not?

A. Yes, sir.

Q. And in the easterly portion of Queens?

The Master: You need not answer that.

Q. Where is the first ward located?

The Master: You need not answer that.

Mr. O'Brien: Your Honor——

6822 The Master: I am limiting the cross-examination now.

Mr. O'Brien: I am going to close in a couple of questions.

The Master: Maybe they will not be answered. Go on and ask them.

Mr. O'Brien: The easier way, I think would be to allow the witness to answer.

The Master: I have sometimes thought that, 6823
and then I concluded that I would not.

Q. How long were you in Queens?

The Master: You need not answer that. It has already been asked and answered.

Q. How long were you in this territory?

The Master: You need not answer that, it has been covered.

Q. Are you still in this territory?

The Master: You need not answer that; it has been covered.

Q. When you first went into this territory did you use the field book of the man who preceded 6824
you in that territory as deputy commissioner?

A. Yes, sir.

Q. And you used his valuations?

The Master: That has been covered; you need not answer that.

A. I had them before me.

Q. Did you change them in your own?

The Master: Don't answer that?

The Witness: I would like to answer that if you will let me.

The Master: Don't answer. That subject matter has been fully covered.

Mr. O'Brien: Of course, your Honor is giv- 6825
ing me an exception to all this.

The Master: Certainly, an exception is allowed to every ruling.

Mr. O'Brien: I noticed that in many instances yesterday the stenographers did not note an exception.

The Master: I have repeatedly stated on the record that whether the stenographer notes an

6826 exception or not, an exception is presumed to have been taken.

Mr. O'Brien: Where they are adverse to my objection?

The Master: Where they are adverse to your objection.

Mr. Ransom: That applies both ways?

The Master: That applies both ways.

Mr. O'Brien: What does counsel mean by "both ways"?

The Master: If I rule against him, he may be presumed to have an exception.

6827 Mr. Ransom: When the Master rules in your favor in letting in books, I have an exception.

Mr. O'Brien: I don't think there is anything further at this time, but I would like to have the privilege of recalling him after I have had a chance to consult the tax department. I may state, your Honor, that yesterday when I endeavored to get in touch with the tax department to go into some matters that were covered by their bringing this witness here, everybody in authority was gone, and I was not able to consult with any of the people in authority. In other words, we were taken very much by

6828 surprise by having employees of the defendant, the City of New York, brought into this case and made witnesses for the complainant.

The Master: I didn't know the City of New York was a defendant.

Mr. Ransom: It rarely acts like a defendant.

Mr. O'Brien: They were made a defendant yesterday when they brought the element of

the gas purchased by the municipality into this 6829
action.

The Master: The situation in that respect, as to any further cross-examination by you of Mr. Hogan is that if you want to do that at any time, you will have to subpœna him, and then I will rule.

Mr. O'Brien: It is very likely that I would not care to have further cross examination, but not being able yesterday to speak to anybody in authority in the Tax Department, and not having been able to go to the office this morning before the opening of this case at 9:15, I 6830
would like the privilege of recalling him for further cross-examination if, after consulting the heads of the Tax Department of the City, I may deem it necessary.

The Master: That is perfectly clear to me, and I am trying to make it perfectly clear to you, that if you have any further questions you want to ask Mr. Hogan in further cross examination, you may subpœna him and bring him here, but I will not put the burden on the complainant of bringing him here again.

Mr. O'Brien: You mean make him my wit- 6831
ness?

The Master: No. You have the burden of bringing him here. So long as it is cross-examination he is not your witness.

Major Clark, do you want to ask anything?

Mr. Clark: No, sir.

REDIRECT-EXAMINATION BY MR. RANSOM:

Q. Mr. Hogan, you were asked regarding the sale of property in Block 1999, in 1917, to the Fifth

6832 Avenue Coach Company. You stated that you ascertained the selling price of that property. Will you state it?

Mr. Chambers: I object to that.

A. No, sir, not unless I am ordered to, because of the fact that at that particular time, I believe, there were no revenue stamps in use, and it is not public property, and the information was given to me in a private and confidential capacity, such as much of my work is, and I don't think it is proper for me to give it. I will have no objection to your stating it, and then I would verify the price, as

6833 I understand it.

Q. Will you state whether or not the purchase price of that property was $297,000., according to the information which you received?

Mr. O'Brien: That is objectionable, and counsel knows it is objectionable when he asks the question.

Mr. Chambers: It is objectionable as to form, and it is incompetent, irrelevant and immaterial.

Mr. Ransom: The door has been opened by the cross-examination.

Mr. O'Brien: The old door is open again.

6834 Your Honor will record my objection any way?

The Master: The objection is recorded of course. I am trying to see why it is not a proper question. Mr. Chambers seems to get very much excited about it as well as Mr. O'Brien. On cross-examination this witness is asked if he got any information as to the selling price of that property.

Mr. Chambers: And he said he did not.

The Master: He said he got it from other 6835
sources.

Mr. Chambers: And we did not press it further.

The Master: Mr. Ransom now asks him to state what other information he got, and he says he will not do it because it came to him in a confidential manner, but he will say whether the figure you claim you sold for is correct or not. There is a good deal of difference between a redirect and a direct. I don't think it is especially important myself.

Mr. Ransom: I press the question. 6836

Mr. Chambers: The door was not opened for it.

Mr. O'Brien: Why, it is purely hearsay, your Honor.

Mr. Ransom: It certainly is proper redirect-examination. It goes to a question on redirect following their interrogation as to the extent of this witness' knowledge. They brought out such facts as they saw fit regarding analogous matters which threw light on the value that this witness has placed upon it.

Mr. O'Brien: The only way to prove it is by bringing the party here who paid the money. 6837

Mr. Chambers: All I asked him was if he got this information from the company. To that he said no, and then I did not press it further. The door was not opened.

Mr. Ransom: It was pressed much further both by Mr. O'Brien and Mr. Chambers.

Mr. O'Brien: The question put by Mr. Chambers had other purposes than to elicit the price.

6838 It was to find out how much he was in touch with the complainant company.

The Master: Objection sustained, exception to Judge Ransom.

By Mr. Ransom:

Q. Are you familiar, Mr. Hogan, with the tax map of the City for the year 1918?

A. Yes, sir.

Q. Is this such tax map so far as it relates to the parcels concerning which you have testified?

A. For 1918.

Q. As of the present time?

6839 Mr. O'Brien: I object to that as not rebuttal.

The Master: He is just asking him if he is familiar with the map.

The Witness: Yes, sir, I am familiar with the map, this being my field map.

The Master: In other words, you have a field book and a field map?

The Witness: Yes, sir.

Q. Is this something that is your personal property, or is it the Tax Department block map?

A. It is a duplicate of the Tax Department plot map, which is a public record. I don't know whether it is a public record or not. We sometimes show it

6840 and sometimes don't.

Mr. Ransom: We subpoenaed the original, and this appears to be——

Mr. O'Brien: Will your Honor hear me a minute before the witness starts to speak?

The Master: There is no question.

Mr. O'Brien: I want to say right here, that I condemn this matter of breaking down the whole system of our Tax Department. I think

it is unseemly to bring an assessor in here and 6841
begin to quiz him about his work." The proper people to be brought in here to verify the assessment of property are the Tax Commissioners. I am talking now about the policy of bringing in a subordinate here and asking him about a communication that is confidential between him and his superiors.

Mr. Ransom: This is a document which has been produced by the representative of the Secretary of the Board of Taxes and Assessments, and is called, "Block Map of Taxes and Assessments in the City of New York, Prepared 6842
by the Board of Taxes and Assessments under authority of Chapter 542 of the Laws of 1892, Section 7, three blocks, 1961 to 2005".

My information is that this book is the block map of the department, and is a public record, and that it is corrected to the present time. I desire to put this in evidence, but if there is any doubt as to whether this is a document which has been produced under our subpœna——

Mr. O'Brien: Will you state the purpose why you wanted in evidence—the purpose of the offer? 6843

The Master: I won't receive this, Mr. Ransom.

Mr. O'Brien: I note my objection.

The Master: I won't receive it because it appears to be certified under date of November 13th, 1895. You will have to have somebody to testify to it. It is ruled out.

Mr. Ransom: I think I had better be sure of that.

6844 OSCAR C. NAUMANN, called as a witness in behalf of the complainant, being duly sworn, testifies as follows:

DIRECT-EXAMINATION BY MR. RANSOM:

Q. Where do you reside?

A. No. 9 East 87th Street.

Q. What is your position with the City of New York?

A. Deputy Tax Commissioner.

Q. How long have you been such?

A. Twenty-four years.

Q. Is that position which you hold the result of
6845 a competitive examination under the Civil Service?

A. Twenty-four years ago we were not in the Civil Service.

Q. And you have been in the service since that time?

A. Yes, sir.

Q. When it was made a Civil Service position?

A. Yes, sir.

Q. You were transferred at that time into that category without examination?

A. Yes, sir.

Q. In 1918 and prior to October 1st, were you assigned to a particular tax district, and if so, what
6846 were the boundaries of that district?

A. Beginning at 59th Street and Third Avenue, running eastward to the East River, northerly along the East River to 96th Street, west on 96th Street to Fifth Avenue, thence south on Fifth Avenue to 79th Street, east on 79th Street to Third Avenue, and back to the point of beginning at 59th Street and Third Avenue.

Q. Does that include Block 1457 on the Tax Map of the City of New York, for 1919? 6847

A. It does.

Q. And Lot 6 in that block?

A. Yes, sir.

Q. In the year 1918, prior to October 1st, in making up your 1919 values, did you furnish to the Tax Board a sworn and detailed statement of the taxable property in the district assigned to you?

Mr. O'Brien: One minute, Mr. Naumann. I renew the objections I made this morning, your Honor, with respect to the witness Hogan, and each and every one of them. I renew them now 6848
and note an exception to your Honor's ruling.

The Master: Same ruling and exception.

Q. Before you swore to that report, had you personally examined each of the properties?

A. I had.

Q. And did your report show that you had personally examined the properties?

A. The reports only show those items on which there had been changes made, either reductions or increases.

Q. And do the reports show the sum for which, in your judgment, each separately assessed parcel of real estate, assessed by you, under ordinary circumstances, would sell if it were wholly unim- 6849
proved?

A. The annual record showed that.

Q. And that was shown under your oath?

A. Under my oath, yes.

Q. Referring now to Lot 6 of Block 1457, on the Tax Map of the City of New York for 1919, located at 62nd to 63rd Street, between First Avenue and

6850 Avenue A, what in your opinion was on October 1, 1918, the sum for which this parcel of land under ordinary circumstances would sell if it were wholly unimproved?

Mr. O'Brien: I renew the objection I made with respect to the witness Quinn and the witness Hogan, on the grounds——

The Master: Upon the same grounds as already stated.

Mr. O'Brien: Upon the same grounds.

The Master: Same ruling and exception.

Mr. Ransom: What is the answer?

6851 A. $145,000, unimproved.

CROSS-EXAMINATION BY MR. CHAMBERS:

Q. Mr. Naumann, how long have you operated in this teritory in which this Lot 6, Block 1457, is located?

A. Three years.

Q. What was the assessed valuation of that same lot in 1917, or what was the value you placed upon it, rather?

A. I have not the figures here. I have only two years, 1918 and 1919, in this book.

Q. This one you gave was 1918 figure?

A. 1918 and 1919.

6852 Q. That is the only figure you have?

A. Those are the only figures I have.

The Master: Was it the same for both years?

The Witness: The same for both years.

Q. Do you recall whether there was any change in 1916 and 1917?

A. I don't think there was.

Q. Before you were in the Tax Department were you ever in the real estate business?

A. No, sir. 6853

Q. How long have you been a Deputy Tax Commissioner.

A. Twenty-four years.

Q. And you have operated in different districts of the City, I assume?

A. Yes, sir.

Q. What ones have you been in, what districts?

A. I have been in the Bronx, when I was first appointed. Then I have been in the so-called Section 3, south of 40th Street, on the west side. Then I was Chief Deputy of the Borough of Manhattan for five years. Then I was assigned to this present 6854
district, and now I am in the Bronx.

Mr. O'Brien: You are in the Bronx now?

The Witness: Yes, sir, unfortunately.

Q. You are out of this district now?

A. I am out of this district since last April.

Q. How did you value this lot, by the front footage on the two streets?

A. By the front foot.

Q. What value did you place per front foot on East 62nd Street?

A. $260 a front foot.

Q. How deep?

A. One hundred feet five inches. 6855

Q. That is to say, looking at this sheet 9—or does that look like the piece of property that you have been thinking of (indicating)?

Mr. Ransom: You are referring to Exhibit 178.

Mr. Chambers: Yes, sir.

A. That is the property.

Q. That is the property?

6856 A. Yes, sir.

Q. You apparently took for the depth on East 62nd Street the jog there in the property on the west.

The Master: No, he took one-half a block.

A. I took this block frontage, so many feet front, to the center line of the block. That would be the center line there (indicating), or representing the center line.

Q. How much a front foot did you value it on East 63rd Street?

A. $260.

Q. That is the same value?

6857 A. $6,500 a lot unit, 25 foot front.

Q. How wide a lot did you figure on?

A. Twenty-five feet.

Q. And the same depth?

A. One hundred feet five inches.

The Master: Did you figure the lots on 62nd Street and 63rd Street at the same value?

The Witness: The same value.

The Master: The same character of property and the same character of neighborhood?

The Witness: The same character; yes, sir.

Q. When you visited this last was there some im-

6858 provements on it?

A. There was a gas holder.

Q. There was a gas holder?

A. A gas holder.

Q. Is that all that you remember?

A. That is all my field book shows.

Q. And did you place a value upon it with the improvements, too?

A. Yes, sir.

Q. You did? 6859

A. Yes, sir.

Q. And in putting a value upon it with the improvements, the only improvement you considered was the holder?

A. That was all.

Q. What did you base your value per front foot upon; what did you use?

A. My judgment.

Q. What entered into your judgment?

A. Just my judgment.

Q. That is all?

A. As to what it was worth.

Q. You did not consider sales of property around 6860 there?

A. There were none.

Q. Did you consult the report filed by this company with the State Tax Department?

A. I saw the report.

Q. For 1918?

A. For 1918.

Q. The value they placed upon the property was in that report?

A. Yes; I believe it was.

Q. Did you consult any other reports filed by the company with any other department? 6861

A. None other.

Q. Did you make any inquiry from the company as to anything about it?

A. None.

Q. Did you see the figure of assessment placed upon it by your predecessor?

A. I assume that I did.

Q. Who was he, do you remember?

6862 A. A man named Murray.

Q. Who?

A. Murray.

Q. Is he alive and around?

A. No, he died three years ago. Edward Murray.

Q. Do you recall how much of the block is occupied by the holder there?

The Master: Of the entire block or this plot?

Mr. Chambers: This lot.

A. The holder, according to the memoranda here, shows 187 feet diameter.

Q. Right in the middle, I assume?

6863 A. I presume right above the center here. One hundred and eighty-seven feet in diameter.

Q. Then this jog—continuing this line here where the jog is, straight over to 62nd Street, there was not anything on that?

A. Nothing.

Q. Running that line right straight down through there (indicating) how many lots would that make, could you tell?

A. Deducting fifty feet it would leave 216 feet, which would be 8 2/3 lots of frontage.

Q. I mean that piece (indicating)?

A. After deducting this, you mean?

6864 Q. How many lots in that piece?

A. Two lots, 50 by 100.

Q. In the jog on the west where there was nothing upon the land?

A. Yes.

Q. Two 25 foot lots? The value you placed upon those two lots was what?

A. $260 a front foot. They are not assessed

separately. They are all in the same plot, included 6865
in the same lot, those fifty feet.

Q. But if you assess separately, you would put a value of what?

A. $13,000.

Q. $13,000 for those two lots, and each valued at the same?

A. $6,500 each.

Q. You are satisfied, aren't you, Mr. Naumann, that the pink portion of this property shown on this sheet 9 of Exhibit 178, is the exact property upon which you placed a valuation?

A. That is the property as shown by the field 6866
book.

By Mr. O'Brien:

Q. Mr. Naumann, you came here under subpœna?

A. Yes, sir.

Q. You received a telegram, too, did you, from some gentleman?

A. Yes, sir.

Q. Have you got the telegram with you?

A. No.

Q. What did the telegram say?

A. It reads to the same effect as Mr. Hogan's, "Must see you to-night on important business", signed "Kane". 6867

Q. And you did not know who Kane was?

A. No, sir.

Q. And you got back from your vacation to see the gentleman who sent the telegram?

A. Yes, sir.

Q. And then what did he say to you?

A. He served me with the papers.

6868 Q. Did he say anything to you at the time he served them?

Mr. Ransom: I object to the question as quite immaterial.

Q. Did he say from whom he came?

A. Shearman and Sterling.

Q. He said he came from Shearman and Sterling?

A. Yes, sir.

Q. Did he offer any apology or excuse for flimflaming you in that way?

Mr. Ransom: I object to the question as immaterial, improper, incompetent in form.

6869 The Master: He may answer.

Mr. O'Brien: This is not going to the credibility of the witness.

The Master: Mr. O'Brien, I am permitting the witness to answer the question to save time.

Mr. Ransom: Exception.

The Master: Did he apologize to you?

The Witness: No, sir.

Q. Mr. Naumann, you have been with the department for 24 years as a deputy?

A. Yes, sir.

Q. And as chief?

A. And as chief of the borough.

6870 Q. And at one time chief of the bureau?

A. Of the Borough of Manhattan.

Q. Your territory here, when you were covering this section extended north from 59th street, did it?

A. Yes, sir.

Q. To what limit on the north?

A. To 96th street.

Q. In that territory you were required to assess during each year how many parcels of real estate?

A. Approximately 8,000. 6871

Q. And that work, that field work, had to be done each year within what time?

A. Beginning on the first of April until the middle of September.

Q. You are required to turn in your official reports in the middle of September?

A. Yes, sir.

Q. And they must cover all of the parcels within your territory?

A. Yes, sir.

Q. You are acquainted with the trend of real estate values in the neighborhood of block 1457? 6872

A. Yes, sir.

Q. Will you state what sales, if any, have taken place there in the past ten years, within a radius of five blocks of that property?

A. I am not aware of any.

Q. What is that?

A. I am not aware of any.

Q. You are not aware of any within fifteen years?

A. My recollection does not go back that far in that district.

Q. Within ten years?

A. Not ten, but within three years.

Q. What is your best memory as to the past ten 6873 years in that particular reference?

A. I haven't any.

Q. You do not recall of any sale?

A. I do not recall of any.

Q. What is the property on the north side of the street bounding this property on the north?

The Master: Which street, 62nd or——

The Witness: 63rd street, north side.

6874 Q. 63rd, I want to know the general description of the property.

A. Tenements.

Q. It is all tenements?

A. All tenements.

Q. Running from First avenue to Avenue A?

A. Yes, sir.

Q. And the rentals of those tenements average about how much an apartment per month?

A. I have no memorandum of that. It is the cheaper type of tenements, if that is what you want to know.

Q. The cheapest type in the city?

6875 A. Cold water.

Q. Cold water flats, many of them vacant?

A. A good many vacancies throughout that territory, yes.

Q. And would you say the same thing of the res of that particular block, if any, on First avenue

A. Yes, sir.

Q. And also as to that block fronting on Avenue A.

A. The same there.

Q. The ground floor is used for stores or for residential purposes?

6876 A. There is an occasional small half store i some of these, but not in this particular block. haven't any memorandum of any.

Q. Are they the old dumb-bell type of tenement

A. Yes.

Q. And is the property to the south of lot No 6, block 1457, of the same general character as tha to the north?

A. Yes, sir.

Q. Tenements? 6877

A. Tenements.

Q. Cold water?

A. Cold water.

Q. Old dumb-bell types?

A. Yes.

Q. Rents at a low level?

A. Low level.

Q. Four apartments to a floor, I suppose?

A. Four—three and four.

Q. And the same would be said of all of the same block bounded on the north by East 62nd Street, on the west by First avenue and on the east by 6878 Avenue A?

A. For that portion of the block not taken by the Gas Company property.

Q. Well, I am speaking of the block bounded on the north by 62nd street.

A. That is the block.

Q. Have they property on that block too?

A. Block 6 is on that block.

Q. What?

A. Lot 6 is on the block you are speaking of.

Q. My question referred to the block bounded on the north by East 62nd street.

A. That is the block, the northerly side of 62nd 6879 street and southerly side of 63rd street.

The Master: It runs through the block. He says the balance of that block that is not used for gas works.

Mr. O'Brien: I asked him the block to the south of the complainant's property bounded on the north by 62nd street.

6880 The Witness: Oh, I beg your pardon. Yes, the same character.

Q. What property is there on Avenue A, opposite block 1457?

A. On the easterly side of Avenue A, I will have to look that up.

The Master: Generally speaking, that is a pretty low class of property, isn't it?

The Witness: Yes, sir. These are also tenements, tenements and sheds on that block opposite Avenue A.

Q. Tenements and sheds?

6881 A. Yes, sir.

Q. And the tenements are of the old type?

A. Two story buildings on the corners, and on the three inside lots are sheds.

Q. Do you recall what the sheds are used for.

A. No, but they evidently are of no value, because we have no assessment on it for improvement whatsoever.

Q. On First Avenue, opposite block 1457, what have you?

A. Tenements, five story buildings.

Q. Of the same type of cold water?

A. Same type, cold water.

6882 Q. About four apartments to a floor?

A. No, these are short; these are only 65 feet, probably two apartments to a floor.

The Master: Haven't you got a pretty complete picture, Mr. O'Brien, of that section—a cheap tenement house section.

Mr. O'Brien: Pretty good, your Honor. I won't be very long about it.

Q. All of the territory on block 1457 not cov-

ered by the complainant's property is improved 6883
by these tenement properties?

A. Yes, sir, the southerly side of the plaintiff's property on the block on 63rd street is five story tenements.

Q. And they abut upon the gas company's property?

A. They do.

Q. And they fill in the whole of the territory east and west of lot No. 6?

A. Yes, sir.

Q. Both on 63rd and 62nd Street?

A. On both. 6884

Q. Have you ever testified as an expert on real estate values in court?

A. No. In *certiorari* proceedings as deputy tax commissioner?

Q. Representing the assessment?

A. Representing the assessment as deputy tax commissioner.

Q. Have you given expert testimony there, or has it been testimony confined to routine?

A. They qualified me as an expert on account of my experience as a deputy tax commissioner.

Q. Have you given testimony in any condemnation proceedings? 6885

A. Never.

Q. Prior to your going into the department, were you in the real estate business?

A. No, sir.

Q. You have been in the Bronx now for a year?

A. No, since the first of last April.

Q. Since the first of April?

A. Yes.

6886 Q. And what is this particular territory in the zoning maps?

A. Unrestricted.

Q. It is unrestricted?

A. Yes, sir.

Q. Did you use the same unit of values for lot No. 6, that you did for the rest of the block?

A. Yes, sir.

Q. I mean the block, the rest of that portion of the block occupied by the tenement houses?

A. Yes, sir.

Q. Does the unit vary on the avenue frontages?

6887 A. The unit is different on the avenue front.

Q. What is the unit on the avenue front?

A. For a lot 80 feet deep, it is $9,500 per lot.

Q. And on Avenue A the same?

A. That is the First avenue, that was?

Q. Yes.

The Master: Was Avenue A the same?

The Witness: It does not show any Avenue A frontage at all, because the Avenue A frontage is all contained in other plots, which do not show.

The Master: On some other block between 61st and 62nd street, you have it there?

6888 The Witness: No, none of them show frontages on Avenue A. The block north of that is an exempt property. It belongs to the New York Homeopathic Medical College and Hospital.

Q. What block is that?

A. That is 63rd to 64th street, on the westerly side of Avenue A——

Q. Is that for contagious diseases?

A. It does not describe it other than the New 6889
York Homeopathic Medical College and Hospital.

Q. Tell me again what the units are on 63rd Street and 62nd Street, between First Avenue and Avenue A?

The Master: He gave that, $260.

The Witness: $260. a front foot.

The Master: $6,500. a lot. Did you add something for plottage on the gas company property?

The Witness: There is something added for plottage.

The Master: But the basis of it is $260. a 6890
foot?

The Witness: Yes, sir.

Q. And there is an element of plottage included in your valuation?

A. Yes, sir.

Q. Did you assume that it was used for gas making purposes, in making the valuation?

A. Seeing the gas holder there, yes, Mr. O'Brien, I did.

By the Master:

Q. Did that affect the value of the land any?

A. No, sir.

Q. You are talking about the value of improve- 6891
ments?

A. No, I am not. Mr. O'Brien asked me whether I assumed that the property was used for gas making purposes.

Q. Yes. Well, you assumed it was, because there was a gas holder?

A. Yes.

6892 Q. But that did not change the unit value of the land?

A. No.

Q. The plottage value that you added, did not have reference to its present use, except that it was in one plot?

A. Except it was in one plot, yes.

Q. I suppose we can find out what the plottage value added was by simply dividing it up into unit lots at $6,500.?

A. Yes.

Q. How much do you think it did add?

6893 A. I think roughly 10 per cent. After the accumulation of lots at $6,500. per lot, plus 10 per cent. on the total, I think.

Q. Is that a well established custom?

A. Why, plottage will vary anywhere from 10 to 20 per cent., according to the location and desirability for acquiring the plot. I have known it to run 20 per cent.

Q. It rarely runs below 10?

A. Below 10.

Q. It depends on the location and the lots?

A. In this territory you can get all the cheap lots you want without paying plottage at all. If
6894 you went to Fifth Avenue you might have to pay as high as 20 per cent. for the additional lots.

Adjourned to Wednesday, August 27, 1919, at 9:45 o'clock A. M.

Last Complainant's Exhibit 206.

Last Defendants' Exhibit U.

6895

CONSOLIDATED GAS COMPANY OF NEW YORK vs. NEWTON, ETC., *et al.*

Before ABRAHAM S. GILBERT, Special Master.

NEW YORK, August 27, 1919.

Met pursuant to adjournment.

Present: MR. RANSOM, MR. VILAS, MR. GOETZ, of Counsel for Complainant.
MR. CHAMBERS, of Counsel for defendant Newton.
6896
MR. HAYWARD and MR. CLARK, of Counsel for Public Service Commission.
MR. O'BRIEN, of Counsel for defendant Swann.

JOSEPH QUINN, recalled.

DIRECT-EXAMINATION CONTINUED BY MR. RANSOM:

Q. Mr. Quinn, evidently, due to interruptions, the answer to one parcel which was given was not noted by the stenographer, so I ask you again what, in your judgment, was on October 1, 1918, the sum for which the parcel of land comprised in lot No. 6897
60, block No. 870, on the tax map of the city of New York for 1919, located at the southeast corner of 15th street and Irving Place, would sell under ordinary circumstances, if wholly unimproved. That question was asked on page 2171 of the record, and was not answered.

Mr. Chambers: Mr. O'Brien is not here yet. He objected to that question. I suggest that

6898 the same objection be noted that was noted for him to the question found or page 2168.

The Master: I will take this subject to the objection that Mr. O'Brien has interposed to all this line of testimony to this and other witnesses, and upon the ground stated as to any witness, so as to protect his objection.

A. $410,000.

The Master: For the 1919 assessment?

The Witness: For the 1919 assessment.

The Master: And for 1918?

The Witness: I have no record of the 1918 land value, as I did not assess that property for 1918.

6899

Q. That is the assessment for the 1919 taxes?

A. 1919 taxes.

Q. This is the figure to which you swore a few days before the first of October, 1918, or about that time?

A. Yes, sir.

Q. Did your detailed statement to the tax board set forth the figures in two columns?

A. The detailed statement to the tax board?

Q. The sworn statement.

A. The annual record of assessed valuations, yes.

6900 sir.

Q. One sets forth the sum for which in your judgment each separate parcel would sell if wholly unimproved?

A. Yes, sir.

Q. And the other sets forth the land and improvements?

A. The total, yes, sir.

Q. And the figures you have given here are the 6901
first column figures?

A. Yes, sir.

Mr. Ransom: That is all.

The Master: Proceed, Mr. Chambers.

CROSS-EXAMINATION BY MR. CHAMBERS:

Q. Mr. Quinn, how long did you say you had been in the Tax Department as a deputy?

A. As a deputy since 1908.

Q. Before that what did you do?

A. I was clerk in the same department.

Q. You did not assess real property?

A. No, sir.

Q. Were you ever a real estate dealer? 6902

A. No.

Q. You acquired all your knowledge about real estate values in the department, I take it?

A. You mean in the department, or from information—from information acquired outside the department also.

Q. Well, working in the department?

A. Working in the department.

Q. You never bought and sold any real property?

A. I never bought and sold any property.

Q. When you were first deputy tax commissioner, what territory did you have? 6903

A. I was assigned to the Borough of Queens.

Q. Did you assess property then?

A. Yes, sir.

Q. And second where did you go, what district did you have after that?

A. My next assignment was in the Borough of Manhattan.

Q. Whereabouts; what portion of the Borough?

A. Section 4, in the territory from 40th street

6904 north to 59th street, from 6th avenue to the North river.

Q. Where next did you have charge?

A. Then there was added to my territory from 79th street to 96th street.

Q. Is that the same territory you have now.

A. No.

Q. What territory did you have after that?

A. I was in that territory for quite a few years, and then I was transferred last year for the 1919 assessment to this territory which I am covering now.

6905 Q. You have now covered all the territory in which you operated as a deputy tax commissioner?

A. Yes, sir.

Mr. Ransom: I don't think he understands that question.

Q. Have you described the various territories you covered since 1908 while you have been deputy tax commissioner of the City of New York?

A. Have I described them?

The Master: Have you told Mr. Chambers the various sections of the city that you have been assigned to assess property in since you were appointed.

6906 A. Yes, sir.

Q. When is the first you assessed, what year that you placed any valuation upon the property on the southeast corner of 15th Street and Irving Place, being Lot 60, Block 870?

A. The year 1919.

Q. You had never placed any valuation before that year; is that right?

A. Yes, sir.

Q. And in fixing your valuation what did you 6907
use; how did you go about it? You looked at the previous assessment, I suppose, on the lot, didn't you?

A. Yes, sir. I knew what the previous assessment on the lot was, because it was before me.

Q. What was it on that lot?

A. Well, I cannot tell you the land value of it, but I know what the total value was.

Q. Don't you know how much a front foot it was?

A. Oh, I can give you that.

Q. Yes, just for the land.

A. Just for the land?

Q. Yes. 6908

A. I figured that 83 feet at $1,800 a front foot.

Mr. Ransom: That is your figure?

The Witness: Yes, sir.

The Master: Mr. Chambers has asked you what it was the year before.

The Witness: I am unable to give that.

The Master: You do not know whether it was the same unit of value the year before?

The Witness: No, I cannot tell.

Q. You looked at that lot, did you?

A. Yes, sir.

Q. And what is on it, what improvements? 6909

A. Why, a building covering—a 19-story building.

Q. On that particular lot?

A. On lot 60.

Q. There is a 19-story building? You do not quite mean that, do you?

Mr. Ransom: You may have the old numbers there, Mr. Chambers. There is in evidence the

6910 reconciliation of the old numbers which you are using with the present numbers on this parcel. The witness is using the new numbers and you are using the old numbers. The present lot 60 is made up of various old lot numbers which are shown on the map to which you are directing the witness' attention.

Q. You look at this Exhibit 178, page 2. Is the property you valued like this property on this sheet here in pink, with the exception of lot 47? It is the same, is it, excluding lot 47?

A. It is the same excluding lot 47.

6911 Mr. Ransom: I think I can clear that up for you. The present lot 60 as shown on the 1919 map was made up of lots designated on former tax maps as lots 60, 59, 56, 54, 50 and 49. That is my recollection.

Q. It is the same with the exception of lot 47—after looking in your book, can you say?

A. It is the same with the exception of lot 47.

Q. All those other lots 59, 60, 66, 64, 50 and 49——

A. Well, I have also a lot 48 included in that, that originally was in that. That is equivalent, though.

6912 Q. What is lot 49 and your 49 together?

A. That is the idea, yes, sir.

Q. This 19-story building was on the land?

The Master: Now known as lot 60?

The Witness: Now known as lot 60.

Q. It is on the property?

A. Yes, sir.

Q. Does it cover the whole property?

A. Yes, sir.

Q. The entire property? 6913

A. Of lot 60?

Q. Yes.

A. Yes, sir.

Q. Covers all lot 60 according to your memorandum, did it?

A. According to my memorandum it covered lot 60.

Q. How many feet did you take on East 15th Street?

A. Do you mean in my calculations?

Q. Yes. What did you use?

A. I took 197 feet 6. 6914

The Master: On 15th Street?

The Witness: On 15th Street.

Q. And how many feet did you take on Irving Place?

A. Eighty-four feet.

Q. And then the other two dimensions are the same number of feet; that is the rear would be 84 and the line parallel with East 15th Street would be the same as you gave on East 15th Street?

A. In other words, Irving Place is figured at 84 by 100 and 15th Street is figured at 197 feet, 6, understand?

Q. You proceeded to value it, did you, as an entire plot, or did you value the different lots? 6915

A. As an entire plot.

Q. How much a front foot?

A. $1,800 on Irving Place.

The Master: A different unit on 15th Street?

The Witness: Yes, sir.

Q. How much on 15th Street?

A. About $1,000.

6916 Q. Have you before you the report made by the complainant company to the State Board of Tax Commissioners as to the value of this piece of property?

A. At the time of making my assessment?

Q. Or at any time before you made your valuation?

A. Why, yes, I saw a copy of the report.

Q. Do you remember what the valuation was that you saw?

A. I could not say.

The Master: Let me ask a question that was

6917 in my mind.

By the Master:

Q. What were your duties in the Tax Department before you became a Deputy Tax Commissioner, Mr. Quinn?

A. I was assistant to the Deputy Tax Commissioner.

Mr. Ransom: You worked in the field.

The Master: I was asking a question, Mr. Ransom.

Q. Did your duties include any work in the field with the Deputy Tax Commissioner?

6918 A. Absolutely.

Q. How long had that continued?

A. Why, in the field from 1890 to 1908—from 1900 to 1908.

Q. So for several years before you became a Deputy Tax Commissioner you were doing this kind of work as assistant to the Deputy Tax Commissioner?

A. Yes.

Q. And before you were appointed a Deputy Tax

Commissioner had you taken any Civil Service ex- 6919
amination?

A. Yes, sir.

Q. Are you one of the men in the classified service?

A. Absolutely.

Q. In the competitive schedule?

A. Absolutely.

Q. And as a result of a competitive examination your name reached the eligible list for appointment?

A. Absolutely.

Q. And your appointment was made from that 6920
eligible list?

A. Yes, sir.

By Mr. Chambers:

Q. What valuation did you place upon Lot No. 47, per front foot?

A. About a thousand dollars.

Q. Well, was it a thousand dollars?

A. Yes, sir.

Q. And the total assessment for that was how much?

A. $21,000.

The Master: What is the frontage, 21 feet?

The Witness: No, sir, 22 feet 6 inches. 6921

Q. It was 22 feet 6 inches front?

A. Yes, sir.

The Master: You see you allowed a thousand dollars on the basis of a 25 foot lot?

The Witness: Yes, sir.

Q. And it is 84 feet deep?

A. Yes, sir.

Q. What is on that lot, did you observe?

6922 A. There was a two-story building there.

Q. And did you make the assessment on both Lots 60 and 47 with the improvements thereon?

A. Yes, sir.

Q. Did you call upon the complainant company for any information in making the assessment of either Lot 47 or 60?

A. No, sir.

Q. Did you learn of any sales in that locality before you made your valuation, or since?

A. No, sir.

Q. You don't know what property sells for in that vicinity of the City?

6923 A. No, sir. That is to say, will you kindly put your question again, Mr. Chambers.

Q. You don't know what property sells for in that locality of the City of New York, do you?

A. Any sales that have taken place I have tried to follow them up, but there hasn't been much activity, that is that immediate section.

Q. But you were not operating in that territory except for a year?

A. I am just talking about in that interval.

Q. But do you recall that there were any sales?

A. No, sir.

6924 Q. How did you make up your valuation?

The Master: How did you reach your conclusion that on Irving Place and 15th Street it was worth $1,800. per front foot, and on 15th Street a thousand dollars?

The Witness: Why, figuring that on the basis of $1,800., or $45,000. a lot, that you would get a return on your investment.

Q. What return did you figure?

A. Well, I mean to say—you are referring to the land proposition alone? 6925

Q. Yes.

A. That you could get a return on the basis of an improvement, don't you understand, that would be erected there, on the basis of $45,000. on the lot. That is to say on the basis of the capitalization probably of 5 per cent, don't you see, on $45,000.

Q. Well, you are supposed to value it without any improvements, without taking them into consideration?

A. I considered them, but I considered for the lease of ground, don't you understand? 6926

The Master: Where did you get the notion that you could lease a lot like that on the basis of $47,000 valuation at 5%, that would mean a little over $2,000 a year, wouldn't it?

The Witness: That is net I am talking about.

Q. Yes, I mean net, a little over $2,000 a year net for a lot there.

A. That is on Irving Place.

Q. How did you reach the conclusion that you could rent lots on that basis?

A. Well, just from my own knowledge of the location of the territory.

Q. What is your knowledge of that territory; 6927 that is what we are trying to find out. In other words, you have certified to the taxing authorities and testified to that in your opinion that land, unimproved, ought to sell for about $47,000 a lot, on the theory that you could rent it for a little over $2,000 a year net, and on the same basis sell it. What we are trying to find out is how you operate

6928 it, how you reached your conclusion, what basis you had for it?

A. Well, the only—there hasn't been any sales in there that have to my knowledge indicated—that I have had. Nothing particularly, your Honor, that would. That is to say I have no sales.

By Mr. Chambers:

Q. Did you see the assessment made the previous year? Have you just followed that?

A. Well, I investigated and looked at the building and figured the properties and had a unit of value, but there was no sale immediately—there

6929 was no sale within that time.

Q. Have you given us now all—the entire operation of your mind in reaching this $410,000?

A. Yes, sir.

Q. That is a lot of money, is it?

A. Yes, sir.

Q. For an unimproved piece of property?

A. Yes, sir.

Q. Did you fix the value of the property at the full value?

A. Yes, sir.

The Master: What you considered full value?

The Witness: What I considered full value.

6930 Q. I assume that some of the valuations that you have placed upon property have been contested successfully in the courts? Do you recall any such?

Mr. Ransom: You mean so far as land is concerned?

The Master: I will let him answer about anything, land or buildings, as showing the reliability of the witness.

Mr. Ransom: Will you read the question?

(The question was read by the stenographer.) 6931

Mr. Ransom: Do you mean 1919?

Mr. Chambers: I mean just what it says. That is as plain as it can be. It is a broad question. I am leaving it to him to tell me how many times he has been upset by the courts in his valuations.

Mr. Ransom: In all the different parcels.

Mr. Chambers: Wherever he has operated.

The Witness: I have no conception of the number of times.

The Master: There have been some? 6932

The Witness: There have been some.

Q. Recently?

A. Not to my knowledge.

Q. That is, the valuation you placed was too high sometimes in these cases?

A. I understand you to mean that on *certiorari* proceedings it was reduced.

Q. Exactly, it was reduced?

A. I guess there have been some instances, but I cannot recall them.

Q. That is the only contest that would be made as to any valuation you placed on property, would be by *certiorari* to reduce the assessment? 6933

A. Application for reduction filed with the department, and upon request a hearing is given to the owners by the Board of Tax Commissioners, and they are final.

Q. Are you heard when those contests are on?

A. Yes, sir, I am in there at the board meeting during the hearing.

Q. The board has reduced your valuations a number of times after those hearings?

6934 A. The board has reduced them?

Q. Yes, haven't they?

A. They have reduced them sometimes, yes.

Q. So your valuations have been attacked in the courts successfully and reduced, and also they have been reduced by the board that heard these appeals, after the review time?

A. They have in some instances.

Q. So if the Courts were correct sometimes your valuations have been too high?

Mr. Ransom: I object to that question.

The Master: Objection sustained.

6935 Q. Have you given us the entire operation of your mind in placing the valuation upon this 15th Street property?

A. Yes, sir.

Q. Are you able, Mr. Quinn, to give us the separate valuations of these lots? It could be figured out on the frontage, on the front foot basis which you have given, couldn't it?

A. Yes, sir.

Q. Did you allow anything for plottage?

A. Yes, sir.

Q. What did you allow for plottage?

A. I allowed about 10 per cent.

6936 Q. Is the plottage included in the front footage you gave?

A. No.

Q. It is excluded?

A. It is excluded.

Q. The plottage is excluded from the frontage?

A. Yes, sir.

Q. You figured the frontage and then added on this sum for plottage?

A. Yes, sir.

Q. In order to find the valuation of any one of 6937
these lots separately—take old Lot No. 60 on Irving Place. Could you give me the valuation of that separately?

A. I haven't got it separately on the book.

Q. Could you give the valuation, could you figure it out for me?

A. According to the map?

Q. Yes.

(Witness makes calculation).

A. About $44,000.

Q. And Lot No. 59, could you figure that out for me separately, old Lot No. 59? 6938

Mr. Ransom: If your Honor please, I don't know that we ought to spend much time on this.

The Master: You are asking him to take a unit of value and make a calculation of the value of Lot 59?

Mr. Chambers: Yes, sir.

The Master: I will not let the witness spend any more time on that.

Mr. Chambers: I want him to give each one of these. It is very important.

The Master: He valued Lot 60 as a unit, basing it on the valuation of $1800. a front foot on Irving Place, and $1000. a front foot on 15th 6939
Street, assuming a full lot of 25 by 100. It probably took him considerable time to figure out the pro rata of the area, on the basis of a shorter lot on 15th Street, and it probably would take him a good deal of time to figure it all, and I see no purpose to be accomplished by it.

Mr. Ransom: I object to it.

6940 The Master: I do not see what is to be accomplished by this calculation.

Mr. Ransom: Let him call him as his own witness, if he wants to, but I object to their taking up the time.

Mr. Chambers: We are not obliged to tell just what we have in mind. It is part of our defense, however.

The Master: You are obliged to tell this. The Master cannot see any purpose to be accomplished, and unless counsel will indicate to the Master some purpose to be accomplished, he will have to assume there is none.

6941 Mr. Chambers: They bought this in separate parcels, not at the same time.

The Master: What has this to do with this man's judgment as to what the parcel is worth?

Mr. Chambers: He is called here to value a plot of land made up of lots——

Mr. Ransom: Do you contest his value?

Mr. Chambers: I have a right to test the accuracy of his valuation, I can have him tear it to pieces and give it to me in separate lots. He says he can do it.

6942 The Master: I do not think you will accomplish anything, Mr. Chambers, by that line of inquiry. For your information, as well as the information of Judge Ransom, I think I had better state on the record that I ruled in this testimony as to evidence of value. You will recall that was my language, "some evidence of value". I do not know whether Judge Ransom takes the position that I am

bound by these valuations made in the course of duty or not, and I am not prepared to say what my conclusion on that is. But, I will say this, that assuming that I have a right to weigh the testimony and give it such weight as I think it deserves, you will not make any more impression upon this testimony, so far as I am concerned, by having this witness calculate the sections of this property. The witness has very frankly indicated his qualifications and his knowledge of conditions, and I need say nothing more on that line at this time, simply intimating that some witnesses may be better qualified and may more fully justify their conclusions, than others. 6943 6944

Q. Did you figure out lot 59; did you get it finished?

A. No, I haven't got it finished.

The Master: Have you an unfinished question?

Mr. Chambers: Yes, he was figuring out 59, and I wanted to see if he had finished. He gave me lot 60 very quickly, old lot 60.

The Master: New lot 60?

Mr. Chambers: No, old lot 60. He gave me the old one in a minute, $44,000. 6945

Mr. Ransom: I object to taking up further time with this.

Mr. Chambers: He could have it all done by this time.

Q. Can't you sit down in ten minutes and figure that all out for us?

The Master: He has been nearly ten minutes on this lot alone.

6946 Mr. O'Brien: The only purpose that will be served for the defendants, your Honor, in having these separate lots computed, is that we want and we are going to insist upon the original cost in these cases.

The Master: I understand that, Mr. O'Brien. The point I am making—and perhaps I have not made myself clear—is that this witness has said he valued that property in October or September, or prior to that time, at $410,000, unimproved, that he had in mind no sales, that he cannot tell you how he arrived at that figure, all he can tell you is from such knowledge as he has he in good faith reached the conclusion that it was worth $1,800 a front foot on Irving Place and $1,000 a front foot on 15th Street, for lots 25 by 100. You cannot add anything to that; there is not much left.

6947

Mr. O'Brien: I will reserve what I want to say until I come to examine the witness myself.

The Master: I do not know whether I am wise in making these observations, but I think it is in the interests of justice to do it, because Mr. Ransom perhaps is misled as to the force of this witness' testimony, and he ought to be warned of the impression that it makes on my mind.

6948

Mr. Chambers: In the statement they have given us as to the assessed valuation of this property they have taken lots 47, 49, 50, and 53 separately and have given us the assessed valuation of them. They have not treated it all as one.

The Master: I understand that all we can ask 6949
of this witness is whether he for the year 1919, prior to October 1, 1919, made one calculation for lot 47 and one for lot 60 as it now exists.

Mr. Chambers: I know, but he says he can give you the valuation of each lot separately.

The Master: So can I.

Mr. Chambers: Well, can you?

The Master: Can I? On the basis of $1,000 per front foot of a lot 25 by 100, on 15th Street, and short lots 84, I can ultimately give you those figures and you can have your engineers and experts do it as well as this witness. I will 6950
not permit the time to be taken up on that.

Q. How many front feet did you consider for that lot 60 when you gave me the figure you have given me?

A. Twenty-five feet.

The Master: On what street?

Q. On Irving Place?

A. On Irving Place.

The Master: Is that a corner?

The Witness: No, sir.

The Master: It is an interior lot?

The Witness: It is an interior lot.

The Master: How far from the corner? 6951

The Witness: 59 feet.

The Master: From the corner?

The Witness: From the corner.

Q. Lot 59 has what frontage on 15th Street?

The Master: What do you mean by Lot 59 and what frontage on 15th Street?

Mr. Chambers: The old lot.

The Master: He has no Lot 59.

6952 Mr. Chambers: He has in this book, your Honor.

The Master: He never dealt with it as Lot 59.

Mr. Chambers: It is part of the whole. It has it in right in this book.

The Master: I know he has, but I am going to limit it to this witness' testimony and his testimony is that he values new Lot 60, that he did not separately value 59, 58, 53 or the rest of them.

Mr. Chambers: I know, but he has those lots and I want to know what the dimensions of
6953 old Lot 59 were. How can we check it up? We have a statement here from counsel in which he says he did not treat it as one plot.

The Master: I cannot help what counsel gave you. See if I can make my position clear. This witness takes the stand and testifies that he arrived at a figure for the Lot 60, which does appear is made up of certain other lot numbers with which he never dealt separately. Once you get beyond an analysis of his estimate of $410,000, for present Lot 60 you are asking him for matters extraneous to his testi-
6954 mony and not bearing on the credibility or accuracy of them in any way.

Mr. Chambers: Yes, I am asking him finally if this front footage, added up, will make the front footage of the whole plot.

The Master: He has given you the dimensions of Lot 60 that he appraised, and it is easy enough for you to compare that with the Exhibit 178. I won't permit it.

Q. Did you adopt the Hoffman rule in fixing the valuation on this plot? 6955

A. Why, yes, sir, I adopted the rule.

Q. That takes into consideration the separate lots?

A. No, it does not take into consideration the separate lots exactly, it takes into consideration the depth of the lots.

Q. The depth of these old lots as individual lots?

A. Not as individual lots, as a plot I assessed them.

Q. What width and depth of lots did you take into consideration? Excluding Lot 47 how many lots on 15th Street did you take into consideration? 6956

A. 197 feet 6.

Q. How many lots?

A. By 84 feet deep.

Q. How many lots?

A. Well, I did not consider them by lots. I took them by the front footage.

Q. You said you used the Hoffman Rule?

A. You do not have to take it by that. You take 84 feet deep and it is the same unit.

The Master: The Hoffman Rule has reference, as I understand it, to the apportionment of the total lot value based upon the amount of variance there may be in the depth of the lot. In other words, the Hoffman Rule assigns a certain portion of the total lot value to the front, and less as it goes back to the rear. So that when you take off so much of the 100 feet at the rear, you are taking off, according to the arbitrary rule or based on the arbitrary rule, a proportionate amount of the total lot 6957

6958 value. That is the Hoffman Rule, as I understand it. Am I correct, Mr. Quinn?

The Witness: Yes.

Q. Did you take any other rule into consideration?

A. Why, no, I did not take any particular rule into consideration. The rule is arbitrary. There is no specified rule. There are several rules.

Q. Didn't you look at these lots and size them up on the map?

A. Why, sure.

Q. Didn't you look at that map with those lots on?

6959 A. Absolutely; I could not figure them otherwise.

Q. When you looked at that map subdivided into lots, what was the width of lot 48, or the frontage of lot 48 on 15th Street?

Mr. Ransom: You mean old lot 48?

Mr. Chambers: Yes.

The Witness: Old lot 48 on 15th Street was originally 23 feet, 6.

Q. And what was 49?

A. 49 was originally 22.

Q. And what was 50?

6960 A. 50 was originally 22.

Q. And what was 53?

A. 74 feet, 6.

Q. What was 54?

A. 13 feet, 6.

Mr. Ransom: May the witness state from what source he has just taken these figures?

The Master: The witness Alrich, as I recall it, Mr. Chambers, made it clear to me at least

that that exhibit was not drawn to scale, but 6961
he testified that the measurements placed on them were correct.

Mr. Hayward: No, Alrich said it was made to scale.

Mr. Chambers: He afterwards corrected it and stated it was made to scale.

Mr. Ransom: May the witness state the source from which he has been taking these figures.

Mr. O'Brien: Let us have it clear now whether this is a valid map that Alrich brought in here.

6962

Mr. Chambers: He says lot 54 is 13 feet 6.

The Witness: 53 may have been thrown into 55.

The Master: Wait a minute now. What I stated I think is correct. Mr. Alrich's measurements here are for totals and not for individual lots.

Mr. Ransom: That is correct.

The Master: Now on sheet 2 of Exhibit 178, Mr. Alrich shows a distance from Irving Place to the extreme easterly end of lot 47 to be 320 feet, and that is all he does show. He does not show the width on Irving Place on individual 6963
lots.

Mr. Ransom: May I have on the record—I have asked several times may the witness state on the record the source from which he has been taking these measurements.

Mr. Chambers: That is a matter for redirect.

The Master: We will take it up later on. Your statement, Mr. Chambers, that his figures did not agree with yours is not correct.

6964 Q. What was the frontage of old lot 56 on your map?

A. Old lot 56 was originally 25 feet.

Q. Now lot 59 on 15th street.

A. Lot 59?

Q. Yes.

A. On 15th street was originally 92 feet.

Q. And on Irving Place?

A. On Irving Place was originally 59 feet.

Q. 92?

A. 59 feet.

The Master: Mr. Chambers, as a matter of fact, interrupting you, I have just been looking at the map in the witness' hands, and taking these figures he has just given you, the total distance as he has already testified, from Irving Place to the extreme end of lot 60 as at present laid out, is 297 feet and 6 inches; the width of lot 47 is 22 feet 6 inches, which makes precisely 320 feet, which is precisely the amount that Mr. Alrich shows on his map.

6965

Mr. Chambers: Excuse me, lot 47 is 23 feet 6 inches.

The Master: 22 feet 6 inches.

Mr. Chambers: Well, the witness gave us 23 feet 6 inches.

6966

The Master: You misunderstood him. It is 22 feet 6 inches.

Mr. Chambers: Well, we wrote it right down here.

The Master: It tallies exactly with what the witness says.

Mr. Chambers: Then you agree that you gave it wrong?

Mr. Ransom: He did not give it wrong. 6967

The Master: Well, he may have.

Mr. Chambers: We have it right down here.

The Master: When you said 23 feet 6 inches, you made a mistake?

The Witness: Absolutely.

The Master: It is 22 feet 6?

The Witness: 22 feet 6.

The Master: There is no question about it.

Q. Where did you get these figures from; where is your source of information?

A. This is the map furnished me by the surveyor of the department of taxes.

The Master: This is the official map furnished you for assessing purposes? 6968

The Witness: Yes.

Q. And you had that before you when you made the assessment?

A. Absolutely.

Q. And that is cut up in lots, such as I have asked you about?

A. The lots that you asked me about are now eliminated and thrown into lot 60 and lot 47.

The Master: Let us get this right, so we will get it on the record. The map you now have was prepared before 1918, wasn't it? 6969

The Witness: Yes, sir.

The Master: At which time the lots were shown separately, 60, 59, 56, 55, 54, 53, 50, 49, 48 and 47, and were laid out on that map in that form; is that correct?

The Witness: For the year 1915?

The Master: For the year 1915?

The Witness: Yes.

The Master: Now, that map, with those

6970 lots shown on it, was, as it was then, and remained that way, but was corrected in 1915 by eliminating all these other parts showing the new distances and showing only lot 60, so that although the map itself has the original lines still on it, showing the old lots with the old lot numbers, you now disregard that in arriving at an assessment, and consider the new lot, which includes all of these lots now except 47, as lot 60?

The Witness: Yes, sir.

The Master: In other words, they did not
6971 eliminate the sub-dividing lines between the various old lots, they just checked them out, but the lines remained?

The Witness: Yes, sir.

The Master: But they have little stars on them to indicate they are to be eliminated in your action?

The Witness: Yes, sir.

The Master: Or disregarded?

The Witness: Disregarded.

Q. In making up this total amount of $410,000, didn't you figure out just as I have asked you, how much the difference—what each of these old lots
6972 was valued at?

A. No, sir.

Q. And then add them together?

A. No, sir.

Q. You haven't any figure there at all on each of the old lots separately?

A. No, sir.

Q. No pencil marks of any kind?

A. No, sir.

Q. How long would it take you—how much longer would it take you to give me 59, that you were figuring? 6973

The Master: I won't permit him to answer, because I am not going to have him do that calculating.

Mr. Chambers: Your Honor won't allow him to figure out how much—what relative proportion 59 bears to the total amount of $410,000?

The Master: No, I won't permit the calculation.

Mr. Chambers: To that I will take an exception.

Q. Will you figure out for me the valuation you placed on lot—of the valuation that lot 56 bears to the $410,000, the old lot 56? 6974

The Master: I won't permit that calculation.

Mr. Chambers: I take an exception.

Q. Will you compute the relative——

The Master: I have tried to indicate to you, Mr. Chambers, that when I come to reach a conclusion if this witness' testimony is not supported in some other way——

Mr. Chambers: Your Honor doesn't understand the purpose of this at all, it is not for that. 6975

The Master: What is it for?

Mr. Chambers: It is for another purpose which we do not care to disclose at the moment.

The Master: Then I will not permit it, because I am not guessing at any purpose.

Mr. Chambers: They have furnished us with an assessment here that does not treat this as lot 60 at all. This is the first intimation that

6976 we have had that lot 60 was assessed as one plot. We have it the old way and right down to date here. His own figures. We ask him for the assessed valuation of these different lots.

Mr. Ransom: That is a very different thing.

Mr. Chambers: And they furnish us now, wherever they got it from I don't know, I am trying to find out so as to check it up.

Mr. Ransom: I will consent that the list go into evidence.

The Master: All I know about it is this, this
6977 witness has never been on this territory prior to the assessment for the year 1918.

Mr. Chambers: I know, but your Honor says he cannot give it to me, he says he can figure it out in a minute.

The Master: I won't permit it.

Q. Now, just taking lot 57, you have an old lot 57 there, haven't you, on your map?

The Master: I don't think so.

Q. You have an old lot 55?

A. Yes, there is an old lot 55.

Q. Will you figure out for me the proportion which the value you placed upon that portion of the
6978 territory marked lot 55 bears to the whole assessment, the whole valuation of lot 60?

The Master: The Master rules that he won't permit the calculation.

Q. I ask you to give me——

The Master: Repeat the same thing throughout, 54, 53, 49 and 48.

Mr. Chambers: Yes.

The Master: And the Master's ruling is the same with reference to all these lots. 6979

Mr. Chambers: I take an exception. I take it that you do not rule it out because of the form of the question.

The Master: No, I am ruling out because I do not think it proper cross-examination.

Mr. Chambers: Nor do you rule it out because I have not asked the question in perhaps the proper way?

The Master: There is no technical point in my mind, Mr. Chambers. If there were, I would tell you. I am ruling it out because I won't permit this witness to spend the necessary time to make these calculations that I do not think accomplish any purpose. 6980

Mr. Chambers: Just for the purpose of making clear our position I call the Master's attention to a typewritten statement furnished the defendant by counsel for the complainant at our request: "Real estate acquired since December 31, 1905", and down at the bottom of it is "No. 59, Block 870, Lots 47, 49, 50, 53, southeast corner of Irving Place and 15th Street, office building", and then the assessed valuation for those four lots is given. 6981

The Master: For what year?

Mr. Chambers: For 1919 assessment, it is headed up at the top.

The Master: Well, then, they gave you an incorrect statement, that is all.

Mr. Chambers: I just ask that you mark that for identification—well, that is sufficient.

Mr. Ransom: In view of what counsel has

6982 just said, may I just say this? Several weeks ago, I think about two months ago, there was furnished to the defendant certain schedules or inventory of the real estate. Those schedules were made up in a form which shows real estate acquired prior to December 31, 1905, and real estate subsequently acquired. A few days or weeks ago there was a request made for the assessed valuation of those properties. Those were furnished in a form to link up according to these schedules, consequently they were divided in these two respects. I shall be
6983 very glad to have placed in evidence the matter so furnished, either as to this particular property or as to all of the properties.

Mr. O'Brien: I was not furnished a copy of that, was I?

Mr. Ransom: I think you were.

Mr. Chambers: Of course, it would be very foolish on our part to allow him to shove in a self-serving declaration, but I merely call it to the Master's attention, so we may check it up. It was furnished to us so we might use it as a basis of checking, and one reason I asked the witness these questions was so I
6984 could check it up again.

The Master: The Master adheres to his ruling.

Mr. Chambers: I object to it being offered in evidence, as a self-serving declaration.

Mr. Ransom: The assessed valuation is a self-serving declaration?

Mr. Chambers: No, the paper.

Mr. O'Brien: I would request——

Mr. Chambers: There are some papers on 6985
the table which are self-serving.

Mr. O'Brien (continuing):—that I be served with a copy of this paper.

The Master: What good is it to you, if it is wrong?

Mr. O'Brien: I want to find out how many mistakes there are in it. Your Honor will recall——

Mr. Chambers: I still insist there are self-serving declarations in it.

The Master: He is not offering it. It is one of these talks about offering things, and 6986
papers being put in, which nobody seems to want to really offer.

Q. Mr. Quinn, will you look at this Exhibit No. 178 and see if lot 7 is the same dimensions?

The Master: Lot 7 on what block?

Mr. Chambers: Block 985, lot 7, and see if that portion of lot 7 shown in pink on this Exhibit 178, page 4, is the same piece of property that you placed a valuation on here?

The Witness: My dimensions for lot 7, block 985——

The Master: Give your dimensions, will you?

The Witness:—are 300 by 184. 6987

The Master: 300 where?

The Witness: 300 feet on 17th street.

The Master: On 17th street?

The Witness: Yes, by 184 feet deep; 300 feet on 18th street.

The Master: In other words, the plot that you assessed runs through from 17th to 18th street?

6988 The Witness: Yes.

The Master: 300 feet where?

The Witness: 300 feet on 17th Street, but 184 feet deep, and 300 feet on 18th Street.

The Master: In other words, it runs through from 17th to 18th Street, and is 300 feet on each street, and the depth is 184 feet, is that correct?

The Witness: Yes, sir.

Q. Then that is the same as this pink?

The Master: No, only Lot 7.

The Witness: Only Lot 7.

6989 Q. Lot 7 is the same on this exhibit, speaking of Exhibit 178?

A. Yes, sir.

Q. It seems to be the same dimensions?

A. Yes, sir.

Q. How did you reach a conclusion as to the valuation of that lot?

A. The valuation of that lot was computed on the basis of the lots adjoining.

Q. Which adjoining lots?

A. Say 19 and 20.

Q. Then go to 19 and 20. What were the dimensions of Lots 19 and 20?

6990 A. 19 and 20 are 25 by 92 feet each.

Q. Those are regular city lots?

The Master: Pretty nearly.

Q. How much did you figure a front foot for those lots?

A. I figured there were 12 lots on 17th Street at $6,500.; 12 lots on 18th Street at $7,000.

By the Master:

Q. You are now talking about Lot 7?

A. Yes, sir. 6991

Q. How much did you figure Lot 19?

A. $6,500.

Q. How much did you figure Lot 20?

A. $6,500.

Q. So you figured all the lots on 17th Street on the basis of $6,500. a lot?

A. Yes, sir.

Q. And on 18th Street on what basis?

A. $7,000. a lot.

By Mr. Chambers:

Q. Did you know of any sales in that locality before you made your valuations?

A. Why no, I had no sales. 6992

Q. Did you consult the report made by this complainant company to the Tax Department?

A. I believe I have seen the report.

Q. Did you call on them for any information concerning these three lots?

A. No, sir, I did not.

Q. What was on Lots 19 and 20, any improvements at all?

A. They were vacant.

Q. When you visited them they were vacant?

A. Yes, sir.

Q. What was on Lot No. 7, some improvement? 6993 What have you got?

A. Storage yards, and there were two gasometers.

Q. You mean holders?

The Master: These big gas tanks?

The Witness: Yes, sir.

Q. What do you call them?

A. Gasometers.

The Master: Counsel have been calling them

6994 holders. I take it what you mean by gasometer is a holder.

The Witness: Yes, sir.

The Master: How many holders?

The Witness: Two.

Q. Two holders, and what else does your record show you found on there?

A. Storage yards.

Q. That is all you got?

A. That is all I got.

Q. Storage yards?

A. Yes, storage yards, vacant, don't you under-

6995 stand.

Q. You didn't treat that as an improvement?

A. No, I have not treated it as an improvement.

The Master: The improvements, are the holders?

The Witness: Yes, sir.

Q. That is the only improvement you considered in fixing your valuation on the land with improvements?

A. Yes, sir.

Q. The two holders?

A. Yes, sir.

Q. And you placed no valuation on Lots 19 and

6996 20 with any improvements on, because there weren't any?

Mr. Ransom: I object to the question as not proper cross-examination.

The Master: It can't do any harm.

Mr. Ransom: I except to it.

Q. Is that right, Mr. Quinn?

The Master: There were no improvements on it?

The Witness: Absolutely none.

Q. Did you place a valuation on Block 985, Lot 7, with the improvements on also? 6997

A. Yes, sir.

Q. For this same time?

A. For this same period.

The Master: I think I can see a situation that will develop. Let me ask you: Is it possible that there were some things on Lots 19 and 20 in the nature of improvements, but that you disregarded them because you didn't think they were of any value?

The Witness: My memorandum recalls that these lots were vacant. 6998

By the Master:

Q. If there were anything on there at all, but you did not consider it of any value, would your notes show it?

A. No, sir.

Q. In other words, if there was something on there, but it had no value, your notes would not show it?

A. No, sir.

Q. It is quite possible that there were some structures on there, but you considered them of no value?

A. I considered them of no value. 6999

Q. And you have recorded it at its vacant land value?

A. Its vacant land value.

The Master: I don't remember just what the testimony shows, but it occurred to me that there might be something.

Mr. O'Brien: This is the lot that has these two tanks that are not being used. I will call this improvement an elephant.

7000 Mr. Ransom: I object to the statement.

The Master: It all depends on the color of the elephant.

Mr. Ransom: He may be an expert on elephants.

Mr. O'Brien: G. O. P.

By Mr. Chambers:

Q. Mr. Quinn, I now direct your attention to Lot 13, Block 982.

The Master: Do you want him to compare dimensions, Mr. Chambers?

Mr. Chambers: Yes.

7001 The Master: I will ask him to read off his dimensions and you can compare them. That is the quicker way.

A. Block 982, Lot 13 is 434 feet 10½ inches on East 14th Street; 434 feet on East 15th Street; 206 feet 6 inches on Avenue C.

Q. And the rear?

A. Rear 103 feet 3 inches, and 103 feet 3 inches.

The Master: The same as on the front, 206 feet 6 inches?

The Witness: Yes, sir.

Q. Block 88, Lot 1, what are your dimensions?

A. 676 feet on 14th Street, 678 feet on 15th

7002 Street, 206 feet 6 inches on Avenue D, and 206 feet 6 inches on Avenue C.

Q. Block 989, Lot 1?

A. 206 feet 6 inches on Avenue C, 235 feet on 15th Street, and 235 feet on 16th Street.

By the Master:

Q. Are you sure that Lot 1 that you assessed does not include an additional lot there?

A. It does not include an additional lot.

Q. Lot 1 that you assessed is 235 feet on 15th 7003
Street and 235 feet on 16th Street?

A. Yes, sir.

Q. Is there an adjoining lot there which has been included in Lot 1 for the year 1920?

A. Yes, sir.

Q. How wide is that additional lot?

A. The dimensions for 1920 were 270 feet on 15th Street and 261 feet on 16th Street.

Mr. Chambers: That is the value that you valued, is it—the one you last gave?

The Master: No, he valued 235 feet for 1919. In other words, Mr. Ransom's calculations are 7004
again wrong, apparently.

Mr. Ransom: Why, no.

Mr. Chambers: I guess I better move to strike out this exhibit, then.

The Master: No, the exhibit is right, but the figures that Mr. Ransom gave you in a schedule showing the assessed valuations for 1919 are apparently inaccurate.

Mr. Ransom: Not at all. How?

The Master: Because this witness, for Lot 1, did not assess Lot 1 as it now exists.

Mr. Ransom: This witness assessed Lot 1 as of October 1st, 1918, for the 1919 taxes. 7005

The Master: Yes, but not the Lot 1 that is on here.

Mr. Ransom: But the figure which he gave was correct for that lot. We have not undertaken to interrogate this witness as to the 1920 figures.

Q. The adjoining lot that is now incorporated into Lot 1 was previously known at Lot what?

7006 A. 16.

Q. And how wide was that on 16th Street?

A. The original lot was 250 feet and is now 224 feet.

Q. So that what has happened is that lot 1 has been extended by incorporating into it part of lot 16; is that correct?

A. In other words, it is an apportionment.

Q. Yes, I know what it is, but the record will not be clear when you talk about apportionment. The Consolidated Gas Company by written request to the taxing department had the map changed;
7007 that is what you mean, isn't it?

A. Yes.

Q. So that now, for the year 1920, lot 1 runs 261 feet on 16th street and lot 16, which previously was 250 feet is now 224 feet?

A. For 1920.

Q. The difference being added to lot 1?

A. Absolutely.

Q. And on 15th street there has been added to lot 1 the difference between 250 feet and 215 feet. So that lot 16 is now shorter by 35 feet for 1920?

A. For 1920, yes, sir.

7008 Q. And lot 1 is longer by the same 35 feet?

A. Yes, sir.

Q. That is on the south end. On the north end lot 16 is shorter by 26 feet and lot 1 is longer by precisely that 26 feet?

A. The same; yes, sir.

Q. On the north side?

A. On the north side.

By Mr. Chambers: 7009

Q. Which one did you appraise as of October 1, 1918?

The Master: For 1919.

A. Lot 1, 266 feet by 235 feet.

Q. That is for October 1, 1918, your last fall's valuation?

A. For the 1919 assessment, 206 feet 6 by 235.

Q. I mean you excluded that lot, did you?

The Master: That was included in lot 16?

A. That was including lot 16.

Mr. O'Brien: Lot 16 being the New Amsterdam Company's? 7010

Mr. Ransom: I object to that.

Mr. O'Brien: Doesn't the book show?

The Witness: This book does not show, no, sir. The other book might show.

Mr. O'Brien: I want to have it shown on the record, your Honor.

The Witness: The New Amsterdam Gas Company, Mr. O'Brien?

Mr. O'Brien: All your valuations are as of October 1st and for the 1919 tax?

The Witness: That is the idea.

Mr. O'Brien: Judge Ransom offers to stipulate, however—— 7011

The Master: Let us disregard it, because there has been no acceptance of the offer, and it is not considered here at all.

Mr. O'Brien: He referred to 1918 taxes.

The Master: Let us forget all offers. We are taking proof now. Next question, Mr. Chambers. Suppose you take block 991, lot 1, Mr. Quinn, and give us the dimensions of the lot.

7012 Mr. Chambers: No, I was not through. I want to know who assessed that lot there, old lot 16, to the New Amsterdam Company.

The Master: He has already answered that while you were talking to Mr. Maltbie.

The Witness: The name on my record shows the New Amsterdam Gas Company on lot 16

By Mr. Chambers:

Q. I heard what you said, but I wanted to be sure about it. You assessed it as of October 1, 1918, for the 1919 assessment, to that Company, the New Amsterdam, did you?

7013 The Master: He so stated.

Mr. Chambers: Well, I want it so clear that they cannot wiggle out of it.

The Master: Well, they cannot wiggle.

Mr. Chambers: All right, that is clear.

The Master: Can we take the measurement for block 991, lot 1?

Mr. Chambers: Yes.

The Master: What is included in lot 1 of block 991, that you assessed at the figures heretofore stated?

Mr. Chambers: If the Master please, there still is some doubt, and I want to get it

7014 clear——

The Master: Let me get an answer to this, and I will let you go back to it. Mr. Chambers, you better get your map and follow Mr. Quinn on this. I have asked him to tell us the measurements of lot 1 in block 991, which he assessed at the figures stated by him in the record. Give me those dimensions.

The Witness: 355 feet 10 inches on East 14th

Street, 206 feet 6 inches on Avenue D, 268 feet 7015
6 inches on East 15th Street, and 224 feet 2½ inches on old Tompkins Street.

Mr. Chambers: That does not gibe at all. That is away off. Let me go back to the other and let us clear up one thing at a time.

Q. There is still some doubt in our minds, Mr. Quinn, about this old Lot 16 here, Block 989. You said that portion of Lot 16 that is now included in Lot 1, Block 989, was in the old Lot 16 and assessed to the New Amsterdam Company, didn't you, for October 1st, 1918?

A. Yes, sir.

Q. Could you give me the dimensions of the old 7016
Lot 16?

A. The old lot 16?

Q. Yes, will you do it?

A. The old Lot 16 is 250 feet on East 16th Street, 250 feet on East 15th Street.

The Master: That is old Lot 16?

The Witness: That is old Lot 16.

Mr. Ransom: For 1920 it will be assessed to the Consolidated; is that correct?

Mr. Chambers: Is counsel testifying? Mr. Ransom is violating the very rule that he complains about. 7017

The Master: So are you.

Mr. Chambers: I am correcting an error.

Mr. O'Brien: The deed from the offspring to the complainant company was in April of 1918, Judge Ransom, as I recall it.

Mr. Chambers: I understand we are not interested in the 1920 assessment.

Q. Look at this page 2 of this Exhibit 178; that

7018 is not Lot 1, Block 991, that you assess. Did you have a different kind of a lot?

A. No, sir, it is not identical with the lot that I assessed.

The Master: The lot that you assessed ran to Tompkins Street, the lot shown on Exhibit 178 runs to the new Marginal Street. Do you see the difference?

Q. Can you place any valuation on that; can you figure out the valuation of that Block 991, Lot 1, as it exists on this Exhibit 178?

A. No, sir.

7019 Mr. O'Brien: What do you call Tompkins Street?

The Master: Old Tompkins Street before they extended and cut through the Marginal Street and had that dock improvement.

Q. Is the valuation you gave for Block 991, Lot 1, greater than this portion in pink here?

The Master: No, it is less.

A. No, it is less.

Q. What valuation was it—or what dimensions did you use for Lot 17, Block 991?

A. That is water. 224 feet 2½ inches.

Mr. O'Brien: By what?

7020 The Witness: Well, that was a bulkhead.

Q. On the Marginal Street?

A. Yes, on the bulkhead.

Mr. O'Brien: 245 by what?

The Witness: 224 feet 2½ inches.

Q. How much land under water did they have?

A. I figured that on the lineal foot, on the bulkhead line, at $250.

Q. Did you figure how far out in to the river they ran? That has something to do with it, hasn't it?

A. I understand there was some grant of 1848, 7021
t I figured it on the lineal foot at $250.

Q. That is regardless of whether they extended
t into the midde of the river or half way?

A. Yes, because it conveyed in my judgment the
cking privileges and wharfage and so forth.

Q. You do not know as a matter of fact just how
ch land under water they have?

A. No.

Mr. O'Brien: How much upland did you take, three feet wide or two feet wide?

The Witness: Just the line for the docking privileges.

Q. Did you figure they had any upland at all? 7022

A. No, sir.

Q. Just land under water starting right from the
reet?

A. Yes.

Q. Right out into the water?

A. Yes.

Mr. O'Brien: You did not go into the grants?

The Witness: No, I did not.

Mr. Ransom: I suggest that Mr. O'Brien's cross-examination better be deferred.

Q. We will go back to block 982, lot 13. What
lue per front foot did you give there? 7023

The Master: That is 14th to 15th streets, Avenue C, west.

Mr. Chambers: I want to get your value per front foot on East 15th street, of block 982, lot 13.

A. Block 982, lot 13, the value on East 15th street
as $280 a front foot.

Q. And on Avenue C?

7024 A. On Avenue C $368 a front foot.

Q. And on East 14th street?

A. $350 a front foot.

Q. Now block 989, lot 1. How much per front foot on East 16th street?

A. Block 989, lot 1, $260.

Q. Now block 989, lot 1. How much per front foot?

A. $220.

Q. And on Avenue C?

A. $320.

Q. Block 988, lot 1, how much a front foot on
7025 East 14th street?

A. $280.

Q. And on 15th street?

A. $220.

Q. And on Avenue D?

A. $220.

Q. And Avenue C?

A. $340.

Q. What plottage did you figure on block 982, lot 13—ten per cent?

A. About ten per cent.

Q. And on lot 1, block 989, the same, or different?

A. Block 989, lot 1, the same.

7026 Q. On block 988, lot 1?

A. About ten per cent.

Q. Did you value these three lots, block 982, lot 13, block 989, lot 1 and block 988, lot 1, at full valuation?

A. Yes, sir.

Q. Block 991, lot 1, in the way in which you have it, how much per front foot did you value that at on east 15th street?

A. $200. 7027

Q. And on Avenue D?

A. $240.

Q. And on East 14th street?

A. $280.

Q. And on the Marginal street?

A. $220.

The Master: He did not estimate on the Marginal street.

The Witness: Tompkins street.

The Master: He ran to Tompkins street.

Q. Tompkins street how much?

A. $220. 7028

Q. Have you given all the property upon which you placed a valuation belonging to the Consolidated Gas Company, as of October 1, 1918, in this immediate locality?

The Master: What is the immediate locality?

Mr. Chambers: Well, these four parcels. In other words, what I want to show is that the Consolidated Gas Company was not assessed for Block 991, Lot 1, as it exists here, because part of it was Tompkins Street, they paid no assessment on it and did not own it.

Mr. Ransom: The deed is in evidence, the judgment of the Supreme Court. 7029

The Master: We are trying to find what this witness assessed. He has testified that Block 991 ran from Avenue D to Tompkins Street, and from 14th Street to 15th Street, the entire block. Now, in addition to that plot shown on the map you have before you, from Tompkins Street to Avenue D, East 15th Street to 14th Street was there any other property other

7030 than the bulkhead property that you assessed for taxes for the year 1919, between Avenue D and the River?

The Witness: No, sir.

The Master: For this company?

The Witness: No, sir.

The Master: Or anybody else?

The Witness: No, sir.

Q. So that portion of block 991, lot 1 on this Exhibit 168, which is greater than your block 991, lot 1, was not assessed?

A. Not assessed by me.

7031 Q. It was a street apparently, it was part of Tompkins Street?

A. Apparently.

Q. And if it was not assessed by you it was not assessed by anybody, was it?

The Master: For 1919?

The Witness: No, sir.

The Master: Has there been any change in your map at this time for 1920?

The Witness: On this particular block?

The Master: Yes, sir.

The Witness: Not that I know of.

Q. Was this the first year you were in this dis-
7032 trict where these particular pieces of property are located?

A. Yes, sir.

Q. Block 982, lot 13, did you fix the valuation of that with improvements?

A. Yes, sir.

Q. What improvements did you find on there that you took into consideration?

Mr. Ransom: I submit this is not cross- 7033
examination.

The Master: I will allow it.

Mr. Ransom: Exception.

A. One building.

Q. And that is all?

A. Yes, sir.

Q. Can you describe the building in any way at all?

A. No, I cannot describe the building, only that it was about 206 feet front, and I think about 65 feet deep.

Q. A shed-like building, or what? It was on the 7034
east end of the lot, wasn't it?

A. I am unable to recall just exactly what part of the lot it was on.

Q. And you cannot recall what kind of a building?

A. I cannot recall what kind of a building from my memorandum here. I do remember that it was on one of the lots, because there were formerly some gasometers on the lots, and they were removed.

Q. You recall, don't you, that the biggest part of that lot, about three-quarters of it, was unoccupied by anything when you visited it? 7035

Mr. Ransom: I object to that as incompetent, irrelevant and immaterial, and not within the scope of cross-examination.

The Master: I will sustain the objection. He is talking about vacant land, Mr. Chambers.

Mr. Chambers: Yes, and I am speaking about vacant land.

Mr. Ransom: You are speaking about improvements.

7036 Q. Three-quarters of it had no improvements on it, did it?

The Master: I sustained the objection.

Mr. Chambers: Exception.

Q. How much of old lot 13, block 982 was without any improvements?

The Master: Objection sustained.

Mr. Chambers: Exception. I cannot understand why your Honor will not let him tell me what portion of the plot had no improvements upon it.

The Master: Because I do not think it is
7037 material as part of the cross-examination.

Mr. Ransom: The witness valued that wholly without improvements.

The Master: I will let you cross-examine as to how he arrived at the value of unimproved land.

Q. Did you assess Block 989, Lot No. 1, with the improvements thereon?

A. Yes, sir.

Q. Do you remember what was on that?

Mr. Ransom: I object to the question.

The Master: I will allow him to say just to identify the property.

7038 Mr. Ransom: Exception.

Q. A gasometer?

A. Yes, sir, one gas holder, as you call it.

Q. Anything else that you took into consideration?

Mr. Ransom: I object to that as not within the scope of cross-examination.

The Master: I will let him state what is on 7039
it, just to identify the property.

Mr. Ransom: Exception.

A. There was one gas holder, and some coal yards, and an engine house or boiler house.

Q. Is that all?

Mr. Ransom: I object to the question as not possibly admissible for the purpose of identification.

The Master: I will sustain the objection.

Mr. Chambers: Exception.

Q. Did you find anything on old lot 16, on the portion of it that you described as 35 feet an East 7040
15th Street and 26 feet on East 16th Street, which you assessed to the New Amsterdam Company?

The Master: Can you tell just where the particular things are on that lot, whether that particular space is covered by something?

The Witness: By a governor house and boiler house.

Q. The boiler house was on that portion of it that I have described?

A. Yes, sir.

The Master: Are you sure of that?

The Witness: Yes, sir.

Q. Block 988, Lot No. 1, did you assess that with 7041
the improvements on it?

A. Yes, sir.

Q. What did you take into consideration there, or what did you find upon it?

Mr. Ransom: I object to the question.

The Master: I will allow the question as to what he recalls finding on it.

A. Retort house, coal house works——

7042 By Mr. Ransom:

Q. Is that all, have you finished your answer?

A. No, sir. Condenser house building, carpenter shop, machine shop, engine room——

Mr. O'Brien: Just a minute now.

The Master: Let him finish his answer. Have you finished your answer?

The Witness: No, sir.

Mr. O'Brien: The witness does not know this, he is just reading from some memoranda, and I am going to object. You would think this was a live institution, instead of a grave-

7043 yard.

The Master: Let him finish.

The Witness: A little tin storage shop, and an office.

The Master: Next question.

By Mr. Chambers:

Q. Was the entire lot covered with buildings?

Mr. Ransom: I object to the question.

Q. Or was some of it vacant?

Mr. Ransom: I object to the question.

The Master: Same ruling. Exception.

Q. Block 991, Lot 1, in the dimensions that you gave, did you assess that with the improvements

7044 thereon?

Mr. Ransom: I object to the question.

The Master: The same ruling.

A. Yes, sir.

Q. What was on there, do you remember?

Mr. Ransom: Objected to on the same ground as before indicated.

The Master: Same ruling.

A. A shed.

Q. That is all? 7045

A. That is all upon that.

Q. Now the dock, what condition was the dock in, or was there a dock there?

Mr. Ransom: I object to the question, I don't think he is an expert.

The Master: I will allow it.

Mr. Ransom: Exception.

A. On Lot 47?

Q. Yes, Block 991?

A. There was a stringpiece along there.

Q. A stringpiece?

A. Yes, sir. 7046

Q. What kind of a stringpiece—a stringpiece is not a dock?

A. I appreciate that. There was a dock there, a sort of a bulkhead of wood.

Q. You would not call it a dock, would you?

Mr. O'Brien: You mean a stringpiece?

The Witness: A stringpiece.

Q. A stringpiece describes it, does it?

A. Yes, sir.

Q. In the valuation you gave for Lot 27 in 991, was your value upon the bulkhead?

A. Yes, sir.

Q. Upon the stringpiece? 7047

A. Yes, sir, it was on the bulkhead line by lineal foot.

Q. You did not place your value upon the land under water, did you?

The Master: He has already answered that.

Mr. Chambers: I think I am entitled to ask him.

7048 A. I considered that the lineal foot assessment was a proper one for the privileges that Lot 47 had.

Q. Well, you had no different valuation for the property with improvements?

A. No.

Q. That covers improvements and everything?

A. Yes, sir.

Q. Does it?

A. Yes, sir.

Q. There isn't any doubt about that?

A. Yes, sir.

Q. And if we looked for the valuation of that piece of property, Lot 47, Block 991, where you
7049 come to your column with improvements, it will be the same figure that you gave me here, am I right?

A. Yes, sir.

Q. So really that figure you gave——

The Master: One moment. Was the witness asked for his assessed valuation for Lot 47 by Judge Ransom?

Mr. Chambers: Yes.

The Master: All right; go ahead.

Mr. Chambers: He gave it at $56,000. Now it appears that that is the assessed valuation of the plot with improvements on it.

7050 Mr. Ransom: The improved and unimproved valuation of that. There aren't any improvements.

Q. Do you consider that that has improvements on it?

A. No, sir.

Q. No improvements?

A. No, sir.

Q. You don't consider that the bulkhead is an improvement to the water front, or stringpiece?

Mr. Ransom: I object to the question as 7051
vague and misleading.

The Master: No, I understand it. Do you consider the stringpiece an improvement?

A. Not necessarily.

Q. If there were no stringpiece and no bulkhead, would you place the same valuation upon it that you did?

A. Yes, sir.

Q. You would?

A. Yes, sir.

Q. In other words, you discarded entirely the string piece and the bulkhead?

7052

A. Yes, sir.

Q. As being of any value?

A. Yes, sir.

The Master: You just valued the water front rights?

The Witness: Yes, sir, that is all, the water front rights.

Q. If you will look at Block 951, Lot 35, what dimensions did you use, taking East 20th Street first?

The Master: What sheet?

Mr. Chambers: Sheet 5. Do you find that, 7053
Mr. Quinn?

The Witness: Yes, I do.

Q. The dimension is what I wanted for that.

The Master: You have asked him a question, to give you the dimensions of Lot 35, Block 951.

Mr. Chambers: Taking East 20th Street first.

The Master: The frontage on East 20th Street.

The Witness: 107 feet, 6 inches.

7054 Q. And how deep?

A. About 92 feet.

Q. And the other line parallel to the 176 feet would be 176 feet too?

A. 176 feet.

Q. How much per front foot did you value that at?

A. $280.

Q. And did you value that with the improvements thereon?

A. Yes, sir.

Q. When you visited it, what did you see on it?

7055 Mr. Ransom: I object to the question as incompetent, not proper cross-examination.

The Master: I will allow that one question.

Q. What is on it?

A. There was an old three-story building.

Q. Was that all?

A. That is all I can remember, sir.

Q. A tenement house—a dwelling house, wasn't it?

A. I can't recall just now.

Q. You don't know what it was used for?

A. No, sir.

Q. Where was that, do you remember, on the lot?

7056 The Master: I will sustain the objection to that.

Mr. Chambers: I did not hear him make any.

Mr. Ransom: I object to the whole line of testimony. I don't think I have to object to every one of these questions.

Mr. Chambers: I will take an exception.

Q. Lot 7, Block 952, just above there. Your dimensions of that, please?

A. 446 feet 6 inches on 20th Street. 7057

The Master: 446 feet?

The Witness: 446 feet 6 inches on 20th Street.

Q. Yes. Proceed.

A. 423 feet on 21st Street.

Q. Yes.

The Master: How much?

The Witness: 423 feet on 21st Street.

Q. How deep?

A. This lot runs irregularly.

The Master: The rear end of it?

The Witness: The rear end of it. On the 7058
westerly side it is 184 feet deep.

Q. Yes. Now, on the easterly side, starting from East 21st Street?

A. It runs 92 feet.

Q. South?

A. South.

The Master: Then east?

The Witness: Eight feet.

Q. Then it runs easterly eight feet?

A. Yes.

Q. Yes.

A. Then 24 feet.

Q. Then southerly 24 feet? 7059

A. Yes.

The Master: Then east?

The Witness: 92 feet.

The Master: Then south?

The Witness: That is wrong.

Q. You are wrong. After the eight feet it goes right straight down in a straight line?

The Master: Yes, that is right.

7060 Q. How many feet is that?

A. Twenty-four feet; then 92 feet to the point of beginning.

The Master: Where is that 24 feet?

Mr. Chambers: It should be 84 feet down there, shouldn't it?

The Master: No, it is 100 feet. It runs 100 feet from 21st Street south, then it turns east 24 feet, then goes south 92 feet, 4.

Mr. Chambers: Is that right?

The Master: No, that is not right.

Mr. Chambers: That is wrong. That is all out of proportion. How far is it from East 7061 21st Street south to the eight feet?

The Master: Beginning at 21st Street, the line runs south 92 feet, then it runs east 32 feet?

Mr. Chambers: Eight feet.

The Master: Thirty-two feet.

Mr. Chambers: East?

The Master: Yes. Then south 92 feet. If you will come here, Mr. Chambers, I will show you where the confusion arose. That is wrong again. It is 104 feet south, that last course.

Mr. Chambers: 92 feet must be correct. 92 7062 and 92 makes 184.

The Master: That last course is 92 feet. That is correct. Lot 35, give me those dimensions on Block 952?

The Witness: 65 feet on Avenue A by 94 feet on 21st Street.

The Master: Is the south line of lot 35 the same dimension, 94 feet?

The Witness: The south line of 35 is the same dimension, 94 feet.

By the Master: 7063

Q. And the rear of the line is 65 feet?

A. The rear line is 65 feet.

Q. Now give me lot 30, will you?

A. Lot 30 is 59 feet 6 inches by 70 feet.

Q. In other words, 59 feet 6 inches on Avenue A?

A. On Avenue A by 70 feet deep.

Q. And it is a square lot?

A. It would not be square with those two dimensions.

Q. Well, it is drawn here just like a square—a rectangle? 7064

A. Yes.

By Mr. Chambers:

Q. What is lot 29?

A. 20 feet 6 inches by 70 feet.

Q. 20 feet 6 inches on Avenue A?

A. By 70 feet in depth on 20th Street.

Mr. Ransom: There is 6 inches variance in the deed, which gives six inches more on one lot and less on another.

The Master: The record speaks for itself now.

Q. Did you assess 592, lot 7, with the improvements? 7065

A. 952, lot 7 with improvements?

Q. Yes.

A. Yes, sir.

Q. What did you fix the valuation of that lot per front foot on East 21st Street?

Mr. Ransom: Unimproved?

The Master: Yes.

A. $320.

7066 Q. And on East 20th Street?

A. The same.

Q. On that you found a holder, didn't you?

A. Yes.

Q. Anything else?

Mr. Ransom: I object to the question as not within the scope of the cross-examination.

The Master: Allowed.

Mr. Ransom: Exception.

Q. Is that all—do you remember where the holder was?

Mr. Ransom: He has not answered the

7067 question.

Mr. Chambers: I thought he looked up and said that was all.

The Master: He was still checking it up. Do you remember anything else except the holder?

The Witness: That is all, sir.

Q. Now, the holder was away over on the west side of the lot, wasn't it?

Mr. Ransom: I object to the question.

The Master: That is the same.

Q. At least half of that lot is vacant land?

Mr. Ransom: I object to the question as in-

7068 competent, irrelevant and immaterial.

The Master: That is sustained.

Mr. Chambers: To that I take an exception.

The Master: I am permitting you to ask what he recalls seeing on the property, but I will not allow the examination beyond that.

Mr. Chambers: Beyond that is for the purpose of showing that he should except the biggest part of it as unimproved property.

The Master: But that is what he is testifying to. He is not attempting to prove any values for improvements; that is why I am sustaining the objection. 7069

Mr. Chambers: Also that it shows the biggest part of it is not used for anything.

The Master: That will not depend on his testimony, and he has not testified to that at all.

Q. Now, lot 35, did you assess that with the improvements?

A. On the same block?

Q. Yes, lot 35, block 952. 7070

A. Yes, sir.

Q. Were there any improvements on that?

Mr. Ransom: I object to the question as incompetent in form.

Q. What did you find on it?

A. I found a building and an extension.

Q. And how much a front foot on East 21st Street did you value that at?

A. Lot 35?

The Master: If you figured it that way at all.

Q. How did you value it?

A. I valued it as on Avenue A. 7071

Q. How much a front foot?

A. $440 a front foot.

Q. And 65 feet front you figure?

A. Yes.

The Master: Did you add anything for plottage?

The Witness: About five per cent.

7072 The Master: Did you add anything because it was a corner?

The Witness: Yes, sir.

The Master: How much?

The Witness: About 50 per cent.

Q. What did you figure on lot 7, block 952 for plottage?

A. About ten per cent.

Q. Lot 30, block 952, how did you value that, by the front foot?

A. Yes, sir, $440 a front foot.

Q. On Avenue A?

A. On Avenue A.

7073 Q. What plottage did you figure for that?

A. I cannot recall; I could figure that out for you.

Q. Did you value that with the improvements on it too?

A. Yes, sir.

Q. What did you see on that lot?

A. On lot 30?

Q. Yes.

A. A four story building.

Q. What kind of a building?

A. I cannot recall just at present.

7074 Q. You don't know whether it was a factory or a tenement house?

The Master: If he can't recall, of course, he doesn't know.

Q. Lot 29, how did you value that?

A. On the basis of Avenue A, $440 a front foot, and 50% for corner.

By Mr. O'Brien:

Q. It is only a little slice, you know, Mr. Quinn?

A. I appreciate that.

By Mr. Chambers: 7075

Q. Did you fix a valuation on that with improvements?

A. I found that piece vacant.

Q. Vacant?

A. Yes, sir.

The Master: The answer to Mr. Chambers' question is that you did not assess a value with improvements?

The Witness: No, sir.

The Master: Am I not correct in my understanding that there may have been something on it that you considered of no value? 7076

Mr. O'Brien: Junk.

Q. No, there wasn't anything on there, was there?

The Master: What I want to make clear is, I want to have the record consistent, there isn't any chance of Mr. Quinn stating it is vacant simply because his memorandum shows that he added nothing for improvements, when he has already testified that there may have been something on there of so little value that he did not take it into consideration.

A. To the best of my knowledge it was vacant.

Q. Block 953, lot No. 1, how did you value that lot? 7077

A. The unit of value, I presume you want?

The Master: Yes, how you arrived at it.

A. First avenue, on a unit of $280.

Q. A front foot?

A. A front foot.

The Master: For full city lots?

The Witness: Yes, sir.

Q. And on East 21st street?

A. $320.

7078 Q. How many city lots?

A. Well, I took it at 413 feet, not by lots.

Q. 413 feet?

A. Yes, sir.

Q. You mean 613 feet?

A. No, sir, I mean 413 feet.

Q. Let us go back a little bit. What dimensions of that block 953, lot 1, did you figure on East 22nd street?

A. 413 feet.

Q. And Avenue A?

A. 197 feet 6 inches.

Q. And East 21st street?

7079 A. 413 feet.

Q. And on First avenue?

A. 197 feet 6 inches.

(At this point a recess was taken.)

By Mr. Chambers:

Q. Block 953, Lot 1, 413 feet on East 21st Street, 413 feet on East 22nd Street? Are you wrong?

A. Block 953?

Q. Block 953, Lot 1.

A. You asked me what I computed on East 21st Street. I told you that I computed 413 feet. For that reason I have used 100 feet deep on Avenue

7080 A lots and 100 feet deep on First Avenue lots, understand, which added together, to the 413 feet, makes a dimension of 613 feet.

Q. You did not understand me. I wanted to get how many feet you considered on the value of Lot 1, Block 953; how many feet you took on East 22nd Street.

The Master: He has answered that. That is what he did. He took 413 feet on the two

streets and took the avenue frontage back 100 feet, don't you see, Mr. Chambers. I understand it perfectly. 7081

Q. What were the dimensions of Lot 1, Block 953?

The Master: As you assessed it.

A. 197 feet 6 inches by 613.

Q. How did you value it, by the front footage?

A. Yes, sir.

Q. How much a front foot on First Avenue?

A. $488. a front foot.

Q. How many lots there did you consider?

A. 197 feet 6 inches.

Q. You did not divide it up into lots? 7082

A. No, sir.

Q. Now, on East 22nd Street how much a front foot?

A. $320.

Q. And how many lots?

A. 413 feet.

Q. I do not understand that. 613 feet?

The Master: He takes one unit on the side streets and a different unit on the avenues, that is the difference.

Q. You mean you cut off 100 feet on First Avenue and on Avenue A? 7083

A. That is the way we assess property.

Q. Then you assess 413 feet at how much a front foot?

A. $320.

Q. And how many lots did you figure were in 413 feet, or did you figure?

A. I just figured the number of feet.

Q. And on East 21st Street 413 feet?

7084 A. Yes, sir, 413 feet.

Q. How much a foot?

A. $320.

Q. And on Avenue A?

A. Well, 197 feet, 6 inches at $440.

Q. A front foot?

A. A front foot.

Q. What plottage did you figure on this lot?

A. About or approximately ten per cent.

Q. Anything for corners? There are four corners.

A. Yes, sir.

7085 Q. How much?

A. Sixty per cent.

Q. You visited the property?

A. Yes, sir.

Q. And did you value it with the improvements thereon?

A. Yes, sir.

Q. What did you find on it?

A. I found six gas tanks, or holders, gas holders, as you call them, and small buildings.

Q. About a third of the westerly end of the lot was vacant, wasn't it?

Mr. Ransom: I object to the question.

7086 The Master: sustained.

Mr. Chambers: Exception.

Q. What can you say, if anything, with regard to whether there were any improvements on the western one-third of the plot?

Mr. Ransom: I object to the question on the grounds already stated.

The Master: Sustained.

Mr. Chambers: Exception.

The Master: Mr. Ransom, I have been read- 7087
ing your memorandum again concerning the admissibility of testimony of Deputy Commissioners and the weight to be given to it. You have not referred me to any case that bears upon the proposition that as matter of law these public officers having made a report it must be taken as evidence of the facts contained in it, have you?

Mr. Ransom: I did not go into that question. That which I did principally showed the statute.

The Master: The theory of your memo- 7088
randum is the close analogy of the charter provisions with the municipal rate decisions. I wish between now and next Wednesday you would look into the question as to how far I am bound by the reports.

Mr. Ransom: There are a very great many cases bearing on that question, of the effect of official action. In this paper which you have before you I quote the provisions of the statute and the rule laid down by the Court as to the basis of the value of land for rate purposes. I shall be very glad to brief for you the question of the effect of this testimony 7089
when received if you wish to take that up at this time.

The Master: I would like to have it when we convene so that I can look into it a bit.

Mr. Ransom: I will have it for you on Wednesday.

The Master: Because, as I have already indicated, I hope when this case is finished to have reached a conclusion on most of the points

7090 involved. And I do not want to spend six months after this case is finished in reaching a conclusion as to matters of law or the method of arriving at a conclusion of fact. In other words, if the authorities bear out the proposition—and I assume counsel for the defendants will at the same time look into it somewhat—that these being official reports made in the course of an official duty, I am bound to take them, it may change the whole complexion of this situation.

Mr. Ransom: It is a matter of official action.

7091 The Master: I know that.

Mr. Ransom: Here is the situation——

The Master: I understand the point. I have it briefed somewhere in my office, but it probably is in the warehouse or somewhere else, the notes I have on that, and I do not know where I can locate them. I think you better present your points of view and counsel for the defendants better present theirs.

Mr. Ransom: I have not done that in calling your Honor's attention to the provisions of the statute.

The Master: I have taken it up to this point
7092 on the theory that it is some evidence of value. Now what I want to know is, is it evidence of value—not some, but is it evidence of value?

Mr. Ransom: You want to know whether it is binding or controlling, whether these defendants can be heard to claim that it is not acceptable.

The Master: I may yet indicate to you that I want additional proof—and then the question, of course, whether it is controlling.

Mr. Chambers: I take it he is submitting this 7093
as the valuation of the real property?

The Master: That is the theory upon which Mr. Ransom has been presenting it and I have been taking it on a somewhat modified theory, namely, that it is some evidence of value. Now the question is whether it is controlling on me, as Judge Ransom puts it.

Mr. Chambers: You mean you wonder whether it would be sufficient if he rested without any other proof?

The Master: Yes, and likewise how far you can go in a defense on proof to the contrary.

Mr. Chambers: Well, of course we can al- 7094
ways attack it. We can attack any valuation of property he submits, by anybody. Because these are public officials does not affect that question. I can relieve your mind of that right off. There is no question about that. He is submitting this now to the Court as the true value of the property, because he has called these witnesses and makes them his own and they valued it at the full value.

The Master: Yes, in accordance with a state statute.

Mr. Chambers: I take it he may now be pro- 7095
hibited from showing any other value.

Mr. Ransom: I am not at all.

Mr. Chambers: My proposition is, now that he submits this as the value, he cannot challenge it. The second proposition is, we are entitled to attack any of it, or all of it as we see fit.

Mr. Ransom: We might have called to the

7096 witness stand in this case half a dozen experts, and the first one may have testified to one figure and the next one to a higher figure and the third one to a still higher figure, and so on up the scale. In calling these witnesses, who are the representatives of the state and of the city, for the performance of certain public functions, and in proving the results of their official action, we have not in any way estopped ourselves from claiming a higher value in this or in any other place.

7097 The Master: Do not let us take up the witness' time on that. I wish counsel would bring it up somewhat, so that we will know where we are at.

Q. Take lot 1, block 979. I want you to give me the dimensions of that lot and block, taking East 22nd Street first.

A. Block 979, lot 1?

Q. Yes.

A. East 22nd street?

Q. Yes.

A. 594 feet.

Q. Just 594?

A. 594 and 8 3 8 inches.

7098 Q. Eight inches and three-eighths of an inch?

A. Yes.

Q. All right. Avenue A.

A. 197 feet 6 inches.

Q. East 21st Street?

A. 666 feet.

The Master: His map is different. Thought the marginal street went through. You better give the easterly lines as you have got them.

The Witness: 112 feet 5-1/4 inches on Avenue B. 7099

The Master: And then the other course, that diagonal line there, is how much?

Q. Now, you have given me the four dimensions, haven't you?

A. No, I have not given this.

Q. Give me the hypothenuse of this triangle, the diagonal line that connects up the 112 feet 5-1/4 inches with the 22nd street corner.

A. I haven't got the diagonal line on that, but I can give you the dimension of—I can't give you the dimension on this diagonal line. 7100

Q. The little triangle down in the corner, which is 112 feet 5-1/4 inches on the westerly side, the vertical line, how much is the line of that little triangle on East 21st street?

The Master: What do you mean?

Q. You have given me this line here 112 feet 5¼ inches. What is the distance from there to there, or the other square of this triangle down in the corner, where it is marked Avenue B.

A. That is not concerned on the map at all.

Q. I am asking for that. It is on here.

A. It is impossible for me. A surveyor will have to determine that. 7101

Q. You don't know that?

A. No.

Q. Do you know the hypothenuse of that little triangle?

A. No, I do not, sir.

Q. That little triangle down in the corner, which has for its westerly boundary the line 112 feet 5-1/4, was not assessed at all to the Consolidated

7102 Gas Company, was it, or valued by you October 1, 1919?

A. No, sir.

Q. What was that, a street?

A. Yes, sir.

Q. On October 1, 1919, it was a street?

Mr. Ransom: I object to the question as incompetent. This witness may not testify what it is. There evidently is some controversy there. It is property which the Consolidated is occupying and using.

The Master: What did it appear on that

7103 map as, a street?

The Witness: It appears on my map, as I said, in the physical condition of Avenue B.

Q. It is a street?

A. Yes, sir.

Mr. Ransom: You did not assess it to anybody?

The Witness: No, sir.

Q. And that was not assessed to any—that was in your territory, that little triangle?

A. Yes, sir.

Q. It was not assessed to anybody?

A. No, sir.

7104 Mr. Ransom: Any part of it?

The Witness: This Avenue B?

Mr. Ransom: Any part of this triangle?

Q. Any part of this triangle bounded on the west by 112 feet 5½ inches?

A. Well, I have lot 27 assessed, 40 feet by irregular, a little lot, 27, this is part of it.

Q. That is another little bit of a triangle?

The Master: No, it is part of it on the other side of old Avenue B.

A. But you are referring to this—— 7105

Q. The part on your map that is included in Avenue B was not assessed to any person or corporation?

A. No.

The Master: But the other side of Avenue B, a little gore there——

The Witness: Yes.

Q. How much was that assessed, or who is it assessed to on the easterly side of Avenue B?

A. The name that appears on my record is the New York Gas Light Company.

Q. The New York Gas Light Company? 7106

A. Yes.

Q. And how much did you assess that at?

A. $6,000.

Q. That little gore?

A. Yes.

Q. How much a front foot did you assess it?

A. Oh, I just took it as a gore lot, $6,000.

Q. A separate lot number?

A. Yes.

Q. What lot number?

A. 27.

The Master: There is another witness that Mr. Quinn was willing to step down for, and we did not want to take him up. We will now suspend Mr. Quinn's cross-examination. 7107

MOSES P. MULHALL, called as a witness on behalf of the complainant, being duly sworn, testified as follows:

DIRECT-EXAMINATION BY MR. RANSOM:

Q. Where do you reside?

A. 2422 University Avenue.

7108 Q. Mr. Mulhall, what is your position with the City of New York?

A. Deputy Tax Commissioner.

Q. How long have you been such?

A. Since May, 1906.

Q. Do you hold a position under the competitive classified civil service?

A. Yes, sir.

Q. What was your business before you became a deputy tax commissioner? Were you in the real estate business?

A. I had had some experience in real estate for
7109 the past twenty-eight years.

Q. In what borough?

A. Partly in Brooklyn and partly in the Bronx.

Q. Had you bought and sold real estate?

A. Yes, sir.

Q. And had conducted building operations in connection with real estate?

A. Yes, sir.

Q. In 1918, prior to October 1st, were you assigned to any particular district, tax district?

A. Yes, sir.

Q. What were the boundaries of that district?

A. What year please?

7110 Q. In 1918, prior to October 1st?

A. I was assigned to the first district.

Q. And that includes what?

A. Section 9, Volumes 1 and 2, and Section 10, Volume 1.

Q. In Section 10 there were comprised Blocks 2543 to 2781?

A. I didn't get all that. From 2143 to 2606 would take the volumes I have assessed.

Q. In 1918, on or before October 1st, did you 7111
make up the detailed statement for the Tax Board required by the Charter?

A. Yes, sir.

Q. And sworn to it before a Justice of the Supreme Court?

A. Yes, sir.

Q. And you set forth all of the taxable property in the district assigned to you?

A. Yes, sir.

Q. And you had personally examined each piece of property?

A. Yes, sir.

Q. And you showed in your sworn statement the 7112
sum for which in your judgment each separately assessed parcel would sell under ordinary circumstances if wholly unimproved?

A. Yes, sir.

Q. Calling your attention to Lot 360 of Block 2583 on the Tax Map of the City of New York for 1919, this being the property located on the north side of 132nd Street, Locust Avenue to the East River, for what sum under ordinary circumstances would this parcel have sold for if it were absolutely unimproved, as of October 1, 1918?

Mr. O'Brien: I object to the question as in- 7113
competent, irrelevant and immaterial, first on the ground that the assessed valuations, even if given, would not be a fair——

The Master: You repeat all the other grounds already stated as to the other witnesses, Mr. O'Brien?

Mr. O'Brien: Yes.

The Master: Anything additional on this particular plot?

7114 Mr. O'Brien: Whether I have included in my many objections to this line of testimony this point or not, I want to have it emphasized that this, like a good many other pieces of property belonging to this company, is not used in the gas making business.

The Master: That objection was made to all of it.

Mr. O'Brien: My objection is not to that part that is occupied by the terminus of the Astoria tunnel, but to the surrounding ground, on part of which there was at one time some structure which has been removed. There is a large plot
7115 there that is boarded up with a high fence. It is vacant land, not necessary for the gas making business, and not used for the gas making business, not now used, or used as of October 1, 1918, concerning which the witness is now being catechised.

The Master: All of these witnesses have testified to the assessed value of property claimed by the complainant to be used; but their evidence as to assessed value does not all prove the fact that it is used. In all these inquiries the question is reserved as to whether or not
7116 any or all of it is used for gas-making purposes. The objection is overruled and exception allowed.

Q. What is your answer as to lot 360, block 2583?

A. $67,000.

Mr. Ransom: That is all.

CROSS-EXAMINATION BY MR. CHAMBERS:

Q. That is where the tunnel comes in from the Astoria plant, isn't it?

A. The tunnel comes in in that block. The tunnel

nd gate house carries a separate lot number, No. 7117
50. The tunnel comes in on the north side of 132nd
treet, and has been cut out of original lot No. 360.

Q. What are the dimensions of that lot 360 in
lock 2583?

A. 106.48 feet on Locust avenue, and 364 feet 6
nches on 132nd street.

The Master: When was that cut up?

The Witness: For the 1917 tax.

Q. That is, on East 132nd street you cut out 20
eet there?

The Master: It cuts out more.

The Witness: It is an irregular parcel con- 7118
taining about 4000 square feet.

By the Master:

Q. You have 106.48 feet on Locust avenue?

A. Yes, sir.

Q. How much on 132nd street?

A. The total of the two pieces on 132nd street
would aggregate 364 feet 6 inches.

Q. Does lot No. 360, with the exception of the part
aken out for the tunnel and gate house, extend
rom Locust avenue and the East River?

A. To the water grant.

Q. And in assessing it you have excluded the part
aken for the tunnel and gate house? 7119

A. Yes, sir.

Q. What is the distance from Locust avenue along
32nd street to the part taken out?

A. 218.69 feet.

Q. What is the distance from the other side of
he part taken out to the extreme easterly end of
he lot?

A. 145.81 feet.

7120 Q. What is the width of the part taken out on 132nd street?

A. Twenty feet.

Q. Now, take the north end of the lot. What is the distance from the east side of Locust Avenue to the beginning of the part taken out? The part taken out lies inside of the lot. In other words, what is the lot that is put in now, what is the new lot number?

A. Lot 450.

Q. That runs down to 132nd Street, but does not run all the way back to the rear of Lot 360, old Lot
7121 360?

A. It does not run to the center line of the block.

Q. What is the distance of the north side of Lot 360?

A. From this point, Locust Avenue?

Q. From the extreme west to the extreme east end of it?

A. That does not appear on this map.

By Mr. Chambers:

Q. Nor does the dimension from the East River westerly to the tunnel?

The Master: No, he hasn't got that either. What is the dimension on the easterly line
7122 facing the river?

The Witness: That does not show.

Q. How did you reach your valuation, by the square foot, or how?

A. By front foot value, for lots nearest to the water, at $5,000., and for the lots on 132nd Street at $4,500.

Q. How much a front foot on Locust Avenue?

A. The Locust Avenue factor would be $3500 a lot. 7123

Q. How many lots did you figure there?

A. We did not take any value on Locust Avenue, because the lots are only 106 feet deep on 132nd Street.

Q. So you took the lots on East 132nd Street?

A. Yes, sir.

Q. How many lots did you take for that distance of 118.69 feet?

A. 12 lots on 132nd Street at $4,500., and 4.2 lots nearest the water front.

Q. That is the 145.81 feet? 7124

A. Yes, sir.

Q. What did you do with those two little short pieces in there on the other side of the 20 foot tunnel property?

A. That is part of Lot 360. That is all embraced in the area of Lot 360.

Q. I know it is, but what did you do with those two little pieces?

A. That is what is there, Lot 360.

Q. Well, the whole thing is Lot 360.

A. The total area of that as I have it is 16.2 lot. The total valuation is $77,000., less Lot No. 450, and the easement for the tunnel, $10,000., a net of $67,000. 7125

Q. There is an easement for the tunnel in this pink portion here. You have an easement for the tunnel running right into this pink on the right of this block?

A. Yes, sir, sub-surface easement.

Q. To whom did you assess that, the Astoria Company?

7126 A. That easement is against the East River Gas Company.

Q. Against whom did you assess this Lot 450, the tunnel?

A. The East River Gas Company.

Q. The tunnel to the East River Gas Company too?

A. To the best of my recollection. That does not appear here, it appears in the corporation records.

Q. Have you the dimensions of the easement?

A. There is one line in pencil there, the easterly line, and the central line. It seems to be 85.60 feet
7127 for the easterly line. I cannot give you the central and westerly line. They seem to be blurred with long usage of the map.

Q. Did you make an assessment of this Lot No. 360 in Block 2583 with the improvements on it?

A. Yes, sir.

Q. What was there on it outside of this tunnel?

The Master: The tunnel is not on Lot 360.

Q. What is on Lot 360?

Mr. Ransom: I object to the question as not within the scope of cross-examination.

The Master: That will be allowed. What
7128 was on 360?

A. A building 20 by 53, a brick building, and there were some pipes there.

The Master: Well, pipes are not structures.

The Witness: Well, they are on a private right of way.

Q. You treated those as improvements, the pipes?

Mr. Ransom: I object to the question.

A. Yes, sir.

Q. Were they laid under the ground? 7129

A. They were laid underground.

Q. That is all there was, this building and the pipes underground?

A. I did not see the pipes; I got that information from the one in charge of the property.

Q. Did you take into consideration the report made by this company to the State Tax Department?

A. Yes, sir.

Q. Did you see that?

A. Yes, sir.

Q. Did you call on them for any other information? 7130

A. No, sir, only what I obtained on the ground from somebody there.

Q. Where are these pipes underground that you speak of?

A. I cannot recall. They are somewhere on this parcel, 48 inch pipes; 108 feet of four foot pipe.

Q. And you took into consideration that building and those pipes for the improvement value, and that is all?

Mr. Ransom: I object to that as not within the scope of cross-examination.

The Master: I will allow that. 7131

Mr. Ransom: Exception.

A. Yes, sir.

Q. Before October 1, 1918, had you ever placed a valuation on this block?

A. Yes, sir.

Q. The year before, did you?

A. Yes, sir.

Q. What was the valuation the year before, for the land?

7132 A. The same as 1919.

Q. Was the lot No. 450 excluded then?

A. Yes.

Q. You made no change then between 1917 and 1918 valuations?

The Master: The witness refers to it as 1918 and 1919.

A. 1918—in 1917 we had a different condition there.

Q. The present valuation was for October 1, 1918. Now, the valuation for October 1, 1917, was the same?

7133 The Master: For the 1918 assessment.

A. The 1918 assessment was the same.

Q. But 1917 was different, because then you had not taken out lot No. 450; is that right?

A. That is right.

Q. What was the valuation in 1917, with that lot in there?

A. This field book would not show that. To the best of my recollection it was the same, $77,000.

Q. Both parcels combined?

A. Yes, sir.

Q. Did you value it in 1916?

A. Yes, sir.

7134 Q. How was it, the same?

A. I cannot say that. I made some changes down there, and I do not recall. I would have to go to the record of assessed valuations for that.

Q. Do you know of any sales of property around that locality?

A. Yes, sir.

Q. Whereabouts was there any property sold?

A. Well, the adjoining piece on the north.

Q. You mean that tunnel? 7135

A. That parcel without the tunnel was sold in 1910, I am reliably informed, for $90,000.

Q. I don't understand the parcel you mean.

The Master: The whole parcel.

Q. You mean that the Consolidated Gas Company bought it in 1910 for how much?

A. $90,000.

Q. Including lot No. 450?

A. Yes, sir.

The Master: That was your information?

The Witness: Yes, sir.

Q. What is the whole thing assesed for now? 7136

The Master: $77,000, he has told you several times.

Q. Did you make that assessment at the full valuation?

The Master: Wait a moment. Let us get this straight. The property that you have been describing as having been assessed by you, does that run to the East River?

The Witness: It does not run to the bulkhead.

The Master: Is there land between this lot 360 and the bulkhead?

The Witness: There seems to be a parcel 7137 between the water grant and the bulkhead which we carry as exempt, owned by the City.

Q. Let me just get that. You mean in making up your assessment you did not run through into the East River on the east?

A. No. That land according to our tax map does not go out to the East River. The water grant is in between that upland and the bulkhead.

7138 Mr. Ransom: Does your tax map go to the water grant?

The Master: No, it does not. Your 178 exhibit would indicate that your land ran to the bulkhead and the witness calls attention to the fact that his assessment is only part of that land, because he has not included in this assessment for lot 360 that part between what his map says is 360 and the water front, which would add to his assessed value.

Mr. Chambers: Airich here reached out and grabbed a piece of a street, too.

7139 The Master: What we want to do is to get this witness' testimony correct upon this record. Apparently the witness' testimony is that his lot 360 runs to the westerly end of the water grant, and there should be and additional value placed on 360, if that lot were to be extended to the bulkhead. So that we can have it on the record for use if necessary, can you tell us what the value was of that space between the easterly end of lot 360, as you have it, and the bulkhead, in 1918, for the 1919 assessment? That apportioned part, being the part of the water front directly east of and
7140 within the confines of the north and south line of lot 360 as extended to the river would be worth in 1918, how much additional?

The Witness: About $28,000.

The Master: So that if the Consolidated Gas Company's property extended to the river and they had been assessed for all of the land down to the bulkhead, the assessment would

have been made by you at $28,000 more than you made it? 7141

The Witness: Yes.

Q. Who owns that piece of property, that water front?

A. According to the records of the Tax Department, the City owns it.

Q. The City of New York?

A. Yes.

Mr. Ransom: But those dimensions on the tax map agree exactly with Alrich's dimensions?

The Master: It depends entirely upon an accurate statement and Alrich perhaps had better be recalled for that purpose, as to whether he intended his map to show a bulkhead, or only to that line which appears to be directly west of the bulkhead. 7142

Mr. Ransom: But aren't his dimensions the same?

The Master: Yes, these talley on the north side.

Mr. Chambers: He did not have any.

The Master: Oh, he did not have any, that is right.

Mr. Ransom: The dimensions of the area shown by Alrich talley exactly with all of the dimensions given by the witness from the tax map. 7143

The Master: May we put it on the record this way, that the complainant does not claim this water grant property, that the witness has just called to our attention?

Mr. Ransom: Well, I can't put that on the

7144 record because I know nothing about it. What we can put on the record is that we have shown by deeds and grants certain dimensions of property in this lot 360, and that the dimensions shown in Exhibit 178, sheet 16, is the property which we claim is owned and used by us, tallies with the dimensions given by the witness on the tax map.

The Master: Well, then you are offering the witness' proof to the extent of the land which he assessed as lot 350?

Mr. Ransom: That is all.

7145 Q. How much did you assess the easement for?

A. $1,000.

Q. That will make $78,000 in all?

A. That is deducted from that. Take the value of the fee clear and deduct the value of the easement.

Q. Well, do you mean you took that out of the $67,000?

The Master: No, he took it out of the $77,000.

Mr. Chambers: Well, it comes out of the—most of it comes out of the $67,000, though.

The Witness: The total valuation $77,000, deduct the value of lot 450 and the value of the

7146 easement $10,000, leaves $67,000.

The Master: In other words, the value of 450 and the easement together was $10,000.

The Witness: $10,000, $9,000 for 450 and $1,000 for the easement.

Q. As I take it, then, the Consolidated Gas Company are really assessed for $66,000?

Mr. Ransom: $67,000.

The Master: He assessed the entire area of old lot 360 at $77,000.

Mr. Chambers: Yes. 7147

The Master: He takes from that $1,000 for the easement, which makes it $76,000, and he takes $9,000 more for lot 450, which brings it down to $67,000.

Mr. Chambers: But most of the easement is on the Consolidated Company's property?

The Master: Well, you can quarrel with the witness about that; I am telling how he gets his figures.

The Witness: That is 200 feet below the surface.

Q. But the easement runs mostly across the Consolidated Company's property? 7148

A. Well, that is a question of opinion as to what the value of that easement is.

Q. It should come out of the $67,000, not out of the $10,000, shouldn't it?

The Master: The witness thinks otherwise.

Q. You took it out of the $10,000?

The Master: He takes $9,000 out——

Mr. Chambers: You took it out of the $10,000?

The Witness: I take the value of 450 at $9,000, and I make a further reduction for 360 for the subsurface easement of $1,000, that 7149 leaves $67,000.

Q. As a matter of fact, that easement really comes out of the assessment of 360, doesn't it?

Mr. Ransom: I object to the question, it is absolutely unfair cross-examination.

The Master: The objection is sustained. It is an inaccurate statement.

7150 Mr. Chambers: I am asking the question, how can it be an inaccurate statement?

The Master: The witness has several times explained and the Master has tried to make it clear that the witness is of the opinion, and was on October 1, 1918, that the entire area of lot 360 and lot 450, unincumbered by an easement was $77,000. Now, he takes off from that old area the area now in 450, valued by him at $9,000.

Mr. Chambers: No, excuse me, he did not; he says he took it off lot 360, the $1,000.

7151 The Master: I am talking now about $9,000 that he takes off lot 360 as originally constituted, for lot 450; that brings 360 unincumbered by an easement to $68,000; then he deducts from the $68,000 that he figures as the value of lot 360 as now constituted, a thousand dollars, because of the burden of that easement, reducing the $68,000 to $67,000. Am I correct, Mr. Mulhall?

The Witness: Yes, sir.

Q. That is the way you do it?

A. Yes, sir.

Q. I can't see why, Mr. Mulhall, you did not take
7152 the thousand dollars for the easement off from the assessed valuation of lot 360.

The Master: He did.

A. I have taken it from 360.

The Master: But he starts with 68 instead of your 67, don't you see?

Q. Then you think the assessed value of lot 360 after that easement is $68,000, if the easement was not on?

A. Yes. 7153

Q. The fee simple, you think, is $68,000?

A. Yes.

Q. You have only allowed a thousand dollars for that easement?

A. Yes.

Q. Did you make an examination of that easement to see what kind of an easement it was?

The Master: He has already described what he was able to do on that. The best information here he could get are—see if I have it right. He based his value of easement on information obtained by him, to the effect that 7154
there is a pipe 4 feet in diameter, 108 feet long, that runs across there 200 feet under the bed of the land. Is that correct, Mr. Mulhall?

The Witness: Yes, sir.

Q. Where did you get that information from?

A. On the property.

Q. From some agent of the Consolidated?

A. Somebody in charge of the property.

Q. You don't know whether it was the representative of the Consolidated?

A. No.

Q. Or of the East River Gas Company?

A. No, I do not. 7155

The Master: And you do not know whether the information given to you is correct?

The Witness: I do not. I know they were working for years there, drilling and blasting out that tunnel, and evidence of working going on underground. They were running in sectional shields there for construction.

Q. How did you know but what these other pipes

7156 that you spoke of were an easement by some other company's underground pipes?

A. I don't know.

Q. You do not know?

A. I don't know.

Q. Would you take off more if those pipes were there?

A. If there were another easement there, it would appear on our maps.

Q. It would appear?

The Master: Mr. Chambers' question, Mr. Mulhall, is if you discovered there were other easements affecting that fee, would you reduce

7157 the value of the fee some more?

The Witness: I would if it affected the part that is not affected by the easement at present.

The Master: Yes, that is what it means.

The Witness: Further burdening the land.

Q. Do you know of any other sales of property around that locality except the one you spoke of?

A. Yes.

Q. Where?

A. The adjoining piece on the north, lot 365.

Q. That adjoins immediately on the north, does it?

7158 A. Yes, sir.

Q. What do you know about the sale of that property?

A. It sold for $60,000 in 1918.

Q. How much of an area was it?

A. About 34 lots.

Q. $60,000, you say?

A. Yes, sir.

Q. 34 lots on what,—Locust avenue?

A. From Locust avenue to the water grant, and 7159
bounded on the north by the southerly line of 133rd street, if opened.

The Master: If opened? Do you mean by that that 133rd street was not then opened?

The Witness: Not acquired by the city.

The Master: In other words, 133rd street is an imaginary street?

The Witness: Not acquired by the city, not a filed map. A tentative street system, I presume.

The Master: So these 34 lots which sold for $60,000. had no street frontage except on Locust Avenue? 7160

The Witness: That is all.

Q. And that was in 1918?

A. 1918.

Q. Any other sales around there?

A. Lot 369.

Q. Where is that located?

A. That is the southeast corner of 134th Street, extending to the southerly line of 133rd Street, if opened, the east side of Locust to water grant and East River.

By the Master:

Q. About how many lots? 7161

A. That parcel contained practically 46 lots.

Q. And sold for how much?

A. That sold in connection with other parcels, Block 2593, Lot 30—I will have to compute the figures. (After computation) Block 2583, Lot 369 and Block 2593, Lot 30, and Block 2583, Lot 365, sold for $325,000.

Q. When was that sale?

7162 A. 1918. I understood it was 325 and the record shows 330.

Q. You looked at the deed and at the revenue stamps on the deed to satisfy yourself?

A. No, I did not. I took the *Record and Guide*.

Q. The *Record and Guide* shows the amount of stamps?

A. It shows the amount of revenue stamps attached to the instrument.

Q. And that showed 330?

A. That showed 330.

Q. But your information was it was 325?

7163 A. 325.

By Mr. Chambers:

Q. Did you have those before you when you made your assessments or had not those sales taken place?

A. I had those during the period of assessing.

CROSS EXAMINATION BY MR. O'BRIEN:

Q. Mr. Mulhall, this is a dormant neighborhood around there; there is a vast acreage to the south of this property open and vacant?

A. Yes.

Q. And that extends down for a space of how many blocks?

7164 A. Well, practically from 136th street to the East River.

Q. And over two blocks to the west there is the huge viaduct of the Connecting Railroad, is there not?

A. Yes, sir.

Q. That connecting Railroad crosses the East River from Astoria, running from Astoria northwest?

A. Yes. 7165

Q. And it strikes the Bronx at about what street?

A. That crosses the Bronx Kills and connects up with the New York and New Haven.

Q. This section is known as the Bronx Kills down to the southward?

A. Yes, sir.

Q. And the structure as it crosses the streets, from where it first hits the Bronx, is how many feet above the ground?

A. Some of the streets are only about 12 feet high, one or two streets.

Q. You mean the archway? 7166

A. I mean the structure.

Q. The structure over the street; but the structure itself stands up about 40 or 50 feet, does it not?

A. Oh, as you get down toward the Kills, yes, it runs very high there.

Q. And there is parallel with it for quite some distance, over 128th, 129th, 130th, 131st and 132nd street northward, another railroad or viaduct?

A. Well, that is the Port Chester Road. The New York Connecting has an easement over the Harlem and Port Chester.

Q. And then there is a gas house right near 7167 this property on 132nd street and Locust avenue?

A. The gas house is on the north side of 138th street from Willard to the river.

Q. You are talking about the gas works now?

A. Gas works.

Q. Well, I am talking about the gas house, the holder.

7168 A. Oh, there are three or four holders distributed down through there.

Q. Give us the locations of the holders.

Mr. Ransom: I object to the question.

The Master: It is offered on the character of the neighborhood.

Mr. O'Brien: Oh, yes.

Mr. Ransom: If it is offered on that ground I have no objection.

A. There is one on the east side of Walnut, between 137th and 136th streets.

The Master: And Walnut is one street west

7169 of Locust?

The Witness: One street west of Locust.

Q. And that is a holder of what Company?

Mr. Ransom: I object to the question as immaterial and not competent, or within the scope of the cross-examination here.

The Master: I will allow it.

Mr. Ransom: Exception. That does not possibly bear on the character of the neighborhood.

Mr. O'Brien: You are not afraid of that question, are you?

Mr. Ransom: I object to it.

7170 A. The Central Union Gas Company.

Q. There is another holder nearer to Locust Avenue and 132nd street, isn't there?

The Master: Do you recall the question, Mr. O'Brien?

Mr. O'Brien: I think it is 134th Street.

A. There are two large tanks—no, there are at least three tanks down there.

Q. By a tank you mean a holder?

A. Yes, a holder. 7171

The Master: Mr. O'Brien thinks there is one on 134th Street. Do you recall that, Mr. Mulhall?

The Witness: Yes, I think so.

Q. With a big pile of coal outside?

A. Yes, sir.

Q. Just south of the De La Vergne Refrigerator Company's plant?

A. Yes, sir. The east side of Walnut Avenue, between 136th and 137th Street. That is the largest tank or holder.

The Master: That is the one you referred to before, I think. 7172

The Witness: The east side of Walnut, between 138th and 139th Streets, there are holders there, three of them. The east side of Walnut, from 138th to 139th. That is north of De La Vergne's.

Q. Where is the De La Vergne factory?

A. It is on the south side of 138th Street, and there are two parcels, the east side of Locust between 137th and 138th Streets and the east side of Walnut, from 137th to 138th.

Q. Does it not extend down into another block, from 135th to 136th Streets, or to the southward? 7173

A. They have one on the south side of 138th Street and west side of Walnut. That is 2589, Lot 31, and 2596, Lot 30. We have a piece on the water front here.

The Master: The witness says he thinks there are three holders in the immediate neighborhood. That is enough.

Q. Mr. Mulhall, there are some stone yards here?

7174 A. Yes, the south side of 136th Street, from Walnut to Locust.

Q. Mr. Mulhall, many of the yards or blocks here are used for storage purposes, in this neighborhood?

A. Stone yards. There is not much storage. There is a stone yard and some factories down there, and a railroad siding.

Q. There are some low sheds along 133rd Street?

A. Yes.

Q. Just west of Locust Avenue?

A. Yes.

Q. They are rented out to small business con-
7175 cerns of various kinds, a blacksmith shop, the Waldorf Laundry and so on?

A. Yes.

Q. Or is it Waldorf something else?

A. There is the Fordham Laundry on 134th Street, on the north side.

Q. And North Brothers Island is a stone's throw away from this property?

A. Well, it is about—about ten minutes in a small boat.

Q. A row boat?

A. A launch.

Q. And right here at 132nd Street and the river
7176 is the dock where the boats go and the ambulances go to North Brothers Island?

A. The Health Department has a dock at the foot of 132nd Street.

Q. Yes, and that dock is used in connection with North Brothers Island?

A. Yes.

Q. And North Brothers Island is the location of the contagious disease hospitals of the City?

A. Well, they have consumptive cases there. I 7177
do not know anything about the other cases.

Q. You do not know that it is for contagious diseases generally?

A. Well, I have been over there. I did not know there was any but consumptive cases there.

Q. You know that the drug addicts are going to be quartered there now?

Mr. Ransom: I object to the question.

The Master: Objection sustained. Nobody knows where they are going to be quartered. The administration is changing its mind every few days. 7178

Mr. Ransom: They say they might put it in four different places.

Mr. O'Brien: Well, that is obnoxious.

The Master: Do not let us assume that something is going to happen in this city adminstration.

Q. Where did you get your information about this easement?

A. It appears on the tax map.

Q. Is that the only information?

A. That is all.

Q. Nobody told you the terms of the easement?

A. No. 7179

Q. Do you know personally how much of the territory is taken up by the tunnel underneath this plot?

The Master: You mean lot 360?

A. Affecting 360.

Q. I am asking you what you know personally about it, Mr. Mulhall.

A. I only know what I can see on the tax maps.

7180 Q. That is all you know?

A. Yes.

Q. You were not present there watching them put the tunnels in?

A. Why, I saw them working there from time to time, just through the shaft.

Q. Just through the shaft, but you do not know from the shaft whether the tunnel runs directly south, or whether it runs directly east?

A. No, this map is changed by the surveyors' department. That is all we know about it.

Q. Then you do not know personally whether
7181 that tunnel takes up more of the territory in lot 360, or less?

A. No.

Q. You have simply taken the diagram furnished to you in the tax department?

A. Yes, sir.

Q. If that tunnel to the same width extended from the shaft directly eastward toward the river, it would be a larger easement, and there would be a greater deduction made?

A. Yes, sir.

Q. From the fee?

A. Yes, sir.

7182 Q. Did you assess it as vacant land?

Mr. Ransom: I object to the question as framed.

The Master: He has already testified that he assessed it in accordance with the terms of the charter, as to what it would sell for unimproved.

Q. Then you assessed it as unimproved, did you —the land as unimproved?

A. First, yes. The first step in the valuation. 7183

The Master: He placed a value on it unimproved.

Q. Then you add the improvements there, put in a separate column?

A. Yes.

Q. Then what I want to get from you, Mr. Mulhall, is, assuming two plots of ground, we will say, right here, identically located, I mean to say so far as value goes; take a plot on the south side of this same street, 132nd street, and it is vacant and there is no improvement on it, would you give it the same value as the plot on the north? 7184

A. Certainly, if the conditions were the same.

Q. In other words, when you were assessing a piece of land—I am speaking generally now, in your work as a deputy tax commissioner, when you are assessing land with improvements on it, you assess first the land without improvements, and then you assess the improvements?

A. Yes, with improvements.

Q. With improvements?

A. Yes.

Q. Does the land separately assessed, upon which there are actually improvements—is that given a greater valuation than the same plot of land 7185 similarly situated without any improvements?

A. No greater, no.

Q. No greater?

A. No.

The Master: The land values have got to be uniform?

The Witness: Yes.

7186 Q. Is your valuation of the plot immediately to the south of this lot 360 the same?

The Master: You mean the basis of value the same?

Mr. O'Brien: Yes, or units of value.

A. Well, we have a different condition there.

Q. Then the unit is not the same, Mr. Mulhall?

The Witness: It is of more value towards 138th street.

Q. What?

A. It is of more value as you got towards 138th street.

7187 Q. Well, I mean immediately to the south.

A. That is the railroad; that is all the railroad.

Q. I mean the vacant plot across the street. I do not care whose it is; is it the same value?

The Master: Do you assess that on the same basis of valuation?

The Witness: Practically.

The Master: The conditions are different.

The Witness: You see, that piece takes in —I have a special memorandum on that. That takes in all that south of 132nd, all those pages, 1, 2, 3—take in those three pages.

Q. That would not mean anything on the record.

7188 Read them on the record.

A. It takes in 2583, lot 2, and embraces three pages in this book.

Q. It covers many blocks?

A. They are very large blocks.

The Master: I do not think I will take that. It is an entirely different condition.

Mr. O'Brien: It is absolutely the same kind of territory.

The Master: But in measurements.

Q. I am asking you to give me your unit of value 7189
on the south side of 132nd Street, immediately opposite 60?

A. That would be the same as the north side, if you just take that frontage on 132nd Street it would be the same as the south side.

Q. Is it the same and was it the same in 1918, in your assessment?

A. Yes.

The Master: The minute you get away from that south side you are meeting different conditions.

The Witness: You are getting large parcels 7190
through which there are no streets cut through. It is a railroad terminal.

Q. Do not call it a terminal yet. You mean it is owned by the railroad?

A. It is a switching yard. There are railroads in there.

Mr. Ransom: Let us not try out this question.

Mr. O'Brien: I am going to get this right, Judge Ransom. If the witness does not know, we ought to know it.

The Witness: All south of 132nd Street 7191
is owned by the Harlem and Portchester Railroad.

The Master: And used for railroad purposes?

Mr. O'Brien: Wait a minute, your Honor. It actually is vacant property.

Mr. Ransom: Let the witness testify instead of counsel.

7192 The Witness: There is where the railroad goes through that lot (indicating).

Q. You mean the viaduct that I just asked you to describe—it is over two blocks away.

A. And there are sidings in that section.

Q. But this is a vacant lot so far as its present uses are concerned?

A. Yes.

Q. South of 132nd Street.

The Master: Your testimony is, Mr. Mulhall, as I understand it, that in assessing property on the south side of 132nd Street, immediately south and opposite this property for

7193 1918 and 1919 taxes, you took precisely the same unit of value as you have on the north side?

The Witness: On 132nd Street.

The Master: When you go further south and run along the river front, or go farther east, you run into different and varying kinds of property, and your unit of value changes?

The Witness: Yes, sir.

The Master: Is there any property south or west of this property with which it can be compared, so that we can see what your unit of

7194 value was as to some other piece of property?

The Witness: No.

The Master: 132nd Street east of Locust Avenue stands alone, it is in a class by itself, is it?

Mr. O'Brien: It has got a fence around it, that is the only difference about it.

The Master: What?

Mr. O'Brien: It has got a fence around it.

The Master: I mean that section differs from 7195
other sections near by. That is what I want to bring out. In other words, I want you to bring out, if you can, anything that is bearing upon his judgment, but I can see at once from what the witness has said, and from the entire situation, that once you get away from the south side of 132nd Street, there is no basis of comparison, that is all. If he says, "I valued something at $17 a front foot and something else at $1,000 a front foot", there is no basis of comparison.

Q. On the block west of Locust Avenue, that is 7196
not built up, is it, that is vacant?

A. That is vacant.

Q. It is entirely vacant?

A. Yes.

Q. The rectangular plot?

A. Well, there is a plot.

The Master: With the exception of these gas works and gas holders and the De La Vergne refrigerating plant and some other matters of that kind, and the railroad sidings and structures through there, generally speaking, this section of the city has not been built up and developed, is that correct? 7197

The Witness: South of what street?

The Master: South of 135th Street or 136th Street.

The Witness: It depends on how far west you go. Beyond Willow Avenue there is improvements.

The Master: I don't mean beyond Willow Avenue.

7198 The Witness: Philip Jones is in there, the shirt factory, and there are several other things in there, and several contemplated buildings.

Mr. O'Brien: I move to strike that out.

The Master: Strike it out. As a matter of fact the streets laid out on the maps have not been cut through?

The Witness: No, no street south of 132nd Street.

The Master: They are not cut through?

The Witness: Are not cut through. The railroad is there.

7199 The Master: It is an open section?

The Witness: All a big, vast unimproved parcel.

The Master: Can you get a better picture than that, Mr. O'Brien?

Q. Mr. Mulhall, you spoke about the water front. There is no dock there?

A. Which parcel?

Q. The easterly boundary of this parcel 360?

A. There is no dock there.

Q. You mean there is a stringpiece?

A. There is a stringpiece.

Q. And did you give in your assessment,—did you
7200 include any rights to land under water

A. They apparently don't own any.

Q. They are not included in that valuation on that property?

A. Not included.

Q. And did you take into consideration, when you were estimating the easement at $1,000 the fact that the property could not be used for any other purpose but gas purposes?

A. I think it can be used for other purposes. That 7201
subsurface easement is 200 feet down, does not prevent the building of a structure which did not require any deeper cellar—storage yards, stone yards and such like.

The Master: It will take a pretty deep cellar at that, if you are 200 feet down.

The Witness: It would not be practicable to use it because the fill could not be built upon anyway. It could be used for stone yards and storage yards.

Q. This was originally a swamp property?

A. I don't think so.

7202

Q. How far back does your memory go?

A. I used to swim at Oak Point twenty-five years ago.

Q. But it was the Bronx Kills all the time, wasn't it?

A. Yes.

Q. How did you estimate your easement, was that just an arbitrary amount, $1,000, or did you have any rule in mind?

A. There are improvements underground there that were carried by the corporation for which we have to start off by a value for the easement, and it is 200 feet down, and it would not—it practically 7203
only affects the fee.

Q. Do you know what size the shaft is?

A. I understand—yes, the diameter of the shaft?

Q. Yes.

A. If I had a scale I could tell you, because it appears right here.

Q. But you do not recall it now?

A. No, I do not.

7204 Q. You don't know the size of the tunnel?

A. I understand the tunnel carries two 72-inch pipes, gas mains.

Q. And space besides?

A. Space besides, the gallery, I believe.

Q. And the amount of $1,000 was not fixed with any rule, any particular rule in mind?

A. It is pretty hard to establish any rule for an easement, because there are different conditions in easements.

Q. Well, you guessed at it?

A. I would not say it was a guess. It was an approximate value. I thought the fee was affected.

7205 Q. Have you ever assessed a piece of ground with a similar easement?

A. Yes.

Q. Where?

A. Subway easement, the easement of the New York inter-connecting railway over the Harlem and Port Chester, surface easement and overhead easement, subway easements on private property.

Q. There are more than $1,000, aren't they, for the same consideration?

A. It depends on conditions.

Mr. Ransom: I object to this line of exam-

7206 ination on the part of the Assistant Corporation Counsel, on the ground that it does not appear that the valuation made by this witness has been in any way challenged, and it is not within the scope of cross-examination, as this record stands.

The Master: Objection overruled. I think it is proper cross-examination, if this easement seriously affects this property and Mr.

Mulhall should have deducted $10,000 instead 7207
of $1,000, then your assessed value would be $57,000 instead of $67,000.

Mr. O'Brien: Not only that, your Honor, but physically——

Mr. Ransom: Here is my point. There is nothing to indicate any challenge of Mr. Mulhall's action on the part of the defendant, and until and unless there is, there isn't—these things do not come within the scope of the cross-examination.

The Master: Objection overruled.

Mr. Ransom: Exception. 7208

Q. Mr. Mulhall, have you appeared in any actions as a real estate expert?

A. In condemnation proceedings, in street openings.

Q. For street openings?

A. Yes.

Q. Before you went into the Tax Department?

A. No.

Q. For whom have you appeared, the City?

A. The City.

Q. On Bronx property?

A. Yes.

The Master: You have qualified him pretty 7209
well now, haven't you?

Mr. O'Brien: I don't know about that. That depends upon the Commissioners in that proceeding, if they accepted him.

Mr. Ransom: It will depend on the Corporation Counsel, who put him on.

The Master: Is there anything else?

7210 Q. Do you know whether any objections have been made to this assessment?

A. Yes.

Q. What?

A. The company filed an application for reduction against this assessment.

Q. Claiming that it was unfair?

A. That it was too high.

Mr. Ransom: As to the land or as to land and improvements?

The Witness: Well, it was as to the land.

The Master: That is your understanding of

7211 it?

The Witness: Yes, the question of renting capacity of the land.

Q. And was your assessment the same for 1915 as the previous year?

A. Yes.

Q. Has it been uniform right along?

A. Yes.

Q. For how many years?

The Master: He has covered that, he said four or five years ago he made some changes, but he did not know just what.

The Witness: This field book goes back to

7212 1916. The change in the total value I can tell you as to that, but I cannot tell you as to the land, because our land column is changed each year, and we only enter two years' return, but the total valuation was changed, and I recall that was due to the fact that there were other buildings there when they were constructing that shaft.

Q. They were removed?

A. They were removed. 7213

Q. There were structures there, the foundations of which still remain, back of the watchman's house?

A. There was a big metallic shed there.

Q. That is gone?

A. I haven't got that record.

Q. What was your unit of value on the east side of Locust avenue on that block?

A. The east side, $3500 and the west side $3000.

Q. The west side is nearer to these improvements you spoke about, the Jones & Phelps factories?

A. Yes. 7214

Q. And the Williams stone factory?

A. Yes.

Q. Why did you give this property of the complainant $500 a lot more?

A. Well, it is water front property, practically.

Q. The Locust avenue side is not, is it?

A. The east side of Locust avenue is, the west side is not.

Q. Did you add something to the value of the property because it was connected with the water front?

A. Yes.

Q. Have you used that same unit, that additional 7215 element, all up the line?

A. Yes.

Q. And what is it? I mean along the whole of the Bronx water front, throughout that territory, have you given the property immediately upon the water front an increased valuation of $500 a lot more than the property on the other side of the street?

7216 A. I have uniformly used a higher figure all the way up.

The Master: Take property between 135th and 136th street, east side of Locust avenue, between those two streets; is that water front property?

The Witness: Yes, sir, the east side of Locust avenue, between 134th and 136th is $4000, and the west side is $3500.

Q. You are getting nearer the gas holders all the time as you go along?

A. We are getting nearer 138th street, the prin-
7217 cipal artery of the Bronx.

Q. A principal artery, you mean?

A. A principal artery.

Q. You would not compare it with 149th or 147th street?

A. No, I would not.

Q. You know something about property values and the trend on 138th street?

A. Yes, sir.

Q. What would you say a lot is worth at 137th street and Brown Place?

Mr. Ransom: I object to that.

A. I know that it sold remarkably cheap. An
7218 estate sold it.

The Master: You think it is worth more than it sold for?

The Witness: It is. The man who bought it thinks it is worth more, or he would not buy it.

Q. Do you know the property at the corner of Brown Place and 137th street, half a block which is vacant?

Mr. Ransom: I object to that.

A. Yes, there is a bad bottom there, isn't there? 7219

Mr. Ransom: I object to these questions unless it appears that the competency and qualification of the witness are challenged.

The Master: Objection overruled, with an exception.

Q. Do you know this property?

A. 137th street?

Q. Yes.

A. The piece the City bought for a school?

Q. No, north side of 137th street, half a block, that is vacant.

A. I think I know it; backing up on the Brooks 7220
Casino?

Q. No, not backing up on any Casino.

A. Will you help me out with the name of the owner?

Q. It is the Farrell Estate.

A. Yes, they have a corner there. They have the southeast corner of 138th Street.

Q. There is just a little L runs up, but the rest of it is half a vacant block. What would you say that is worth?

A. I think it is worth what it is assessed.

Q. Do you know what it is assessed?

A. I cannot recall the figures. 7221

Q. Wouldn't you say that about anything that you assess?

A. I certainly would; I would change my figures if I didn't think they were right.

The Master: You don't recall now what you concluded to be the value of that vacant piece?

The Witness: I do not.

7222 Q. Have you added any element of value to Lot 360 for plottage?

A. No.

Q. Did you follow a rule, or do you follow a rule in regard to water front property, any fixed rule?

A. The best rule is basing value on sales or mortgages.

Q. How near was the last sale that you know of to this property?

The Master: We have gone all over that.

Mr. Ransom: They didn't ask him for all the sales, they quit.

7223 The Master: I think we have had enough on that.

Mr. Ransom: If your Honor has any doubt of the witness' qualifications and competency we ought to go into it further.

Mr. O'Brien: We want the truth. If the witness is qualified or unqualified all the defendants want is the truth. The counsel speaks about challenges, and challenging witnesses. A man may be competent to assess property for taxation, and may not be a real estate expert for a rate case.

7224 The Master: The property immediately joining on the north, isn't that the nearest sale you know of?

The Witness: Yes, sir.

Q. Who was the vendor?

A. I don't remember who sold it.

Q. It is owned by the United Electric Light & Power Company, is it?

A. Yes.

Q. Do you know whether they are an affiliated 7225
company of the complainant?

Mr. Ransom: I object to the question.

A. Only from hearsay.

Q. You say the vendor was the United Electric Light & Power Company—the purchaser?

A. The purchaser apparently is the United Electric Light & Power Company.

Q. Who was the vendor?

A. I don't know.

Q. Was the complainant the vendor?

A. I can't tell you.

Q. Where did you get your information about the 7226
selling price?

A. That is confidential.

Q. Well, nothing is confidential in court, nothing is private here.

Mr. Ransom: I object.

A. I got this in confidence and I don't think I ought to tell where I got the information. It was not from the company.

Q. I want to know where you got the price?

A. Suppose I say the revenue stamps show.

Q. They are not reliable, and taxation should not depend upon revenue stamps.

The Master: One minute please. The ques- 7227
tion presented to the Master is whether the witness shall be compelled to disclose the source of his information, such as he got, relative to the sale price of the piece immediately to the north. As I understand it it is the duty of the taxing officials, and the deputy commissioners, to get information wherever they can, and if they were to disclose the information

7228 that they get in proceedings of this kind they probably would not get any more information from the sources they have been getting it from. I think I shall use my discretion and not compel the witness to answer, particularly upon the ground that I think the subject has been fully covered.

Mr. O'Brien: Your Honor over my objection permitted the witness to bring in his field book, and the other witnesses from the Tax Department. I urged that they were confidential communications between them and their superiors.

7229 The Master: I say they are not.

Mr. O'Brien: And if they were to go to the witness' valuation that they ought not—that public policy ought to be against their bringing these witnesses in. They should bring in the Tax Commissioners.

The Master: They are not disclosing anything that is not otherwise disclosed in the record.

Mr. O'Brien: I can show your Honor that my objection was well taken, because if you are going to foster that kind of a practice

7230 where men go out in the field and make tentative assessments that may be overruled by the Tax Commissioners, you are going to break down the discipline of the Tax Department and you are going to create a precedent of having what are really private communications dragged into court. The Court has extended the rule of private communication pretty far, and I think when you drag these

field books in here and allow the complainant 7231
company to delve into the secrecies of the field book used in the actual operations of a Deputy Tax Commissioner, it is going very, very far. Now, as to the question of the reliability, unless we know the source of the information, the information as to an alleged consideration passing in the sale of property immediately to the north, it is absolutely valueless.

The Master: But the answer is that if he told us where he got his information, it being purely heresay, would be just as valueless.

Mr. O'Brien: Here is a company purchasing 7232
property that is owned by the complainant——

The Master: I don't know anything about that.

Q. You don't know who the seller was?

A. This book would not show. An old record would show who owned it.

The Master: You don't remember now, do you?

A. I do not.

Q. Do you know whether the complainant company owned it?

A. I could not say.

Q. Wouldn't you look that up if you are going to 7233
base your assessment upon an alleged consideration, wouldn't it be important to know the relations between the vendor and vendee?

A. Yes, it would.

Q. All those things enter into it, they all come into play?

A. Yes.

7234 Q. You would question its reliability if it was a sale from some one to an affiliated company?

A. Yes, but sometimes we have a name on the record that is not correct, and we get a change from *The Record and Guide* from a dummy.

Q. Do you rely to any great extent upon the consideration set forth in *The Record and Guide?*

A. We do not very often get considerations, but we get a transfer of title, and change the name in the record accordingly.

Q. Where you have considerations set forth in *The Record and Guide*, do you rely for the consid-
7235 erations there set forth in making assessments?

A. It depends on the sale. If it is a foreclosure, or an executor's sale, voluntary options, we accept that as the value, the consideration stated through *The Record and Guide* is official.

Q. If it appears as a voluntary sale you take it as a true consideration, do you?

A. Yes, sir.

The Master: Do you place some reliance on the revenue stamps placed in accordance with the law?

The Witness: Yes.

The Master: You place some reliance on
7236 that?

The Witness: Yes.

Mr. O'Brien: Your Honor, I want to say for your benefit that in the last gas case we tried, we found that the revenue stamps called for a consideration of $500,000, and the actual consideration was proven to be $312,000, and this was done after a real estate expert, so-called,

said that he relied upon the information given 7237
by the revenue stamps.

The Master: That does not affect this witness' confidence in the fact that the people comply with the law and do not violate it. His testimony is that as a citizen, believing that other people comply with the law, and put the true amount of stamps on, and do not expend money in excess of the true amount, or underestimate the amount to save stamps, he places some reliance upon the stamps.

Mr. O'Brien: He goes further than that. I will ask counsel for the complainant now if 7238
the complainant company owned the property.

Mr. Ransom: I have been trying for a long time to get a chance to make a statement on that. The property was not sold by the complainant, so far as I know, or can find from such records as I have in court, it was not purchased by the United Electric Light & Power Company from any Company with which the Consolidated has anything to do. If the United Electric Light & Power Company did purchase it, they apparently purchased it from some one in no way related to the gas 7239
business.

Mr. O'Brien: Who was it?

Mr. Ransom: I don't know.

Mr. O'Brien: Then how can you say it was apparently it was from some one not connected with the Gas Company?

Mr. Ransom: I say from such records as I have.

7240 Mr. O'Brien: Can you furnish the name of the vendor?

The Witness: I think I remember now that it was Hemmenway. I think that was the name of the vendor.

Q. Was it Hemens?

A. He only had it for a short time.

Q. Do you recall that it was S. J. Hemens?

A. I think it was.

Q. Give me any other sale that you had in mind when you made this assessment.

The Master: I will not permit the witness to go through that again. Mr. Chambers in-
7241 quired of him and that has been covered.

Q. Name the other one that Mr. Chambers did not ask.

A. It was bought by a steel man. It was the south side of 136th street to the north side of 135th street, on the west side of Walnut.

Q. Walnut is the avenue immediately to the west of Locust?

A. It has a railroad siding. That was sold for $52,500, and was assessed at $51,000.

Q. It abuts upon the New York Connecting Rail-road?

7242 A. Yes.

Q. And the Port Chester Railroad to the west of that?

A. Yes.

Q. And the information as to the consideration you got where?

A. From the broker who made the sale.

Q. He told you what was in the deed, did he?

A. He told me the price.

Q. Was it expressed in the deed? 7243

A. No.

Q. Who was the broker?

The Master: You need not answer that.

Q. Well, those things are published in the paper every day?

A. It would affect a man's standing if it was known that he gives prices.

The Master: The witness' testimony is purely hearsay anyhow, and I don't want to have any broker get into trouble because he gives the price.

Q. What was that average without regard to 7244
frontage on the avenue or the street, per lot?

A. $2,500 a lot on Walnut avenue and 136th street, and $2,000 on 135th street.

Q. Do you know whether objections were made in previous years to the assessment to the tax department on lot 360?

Mr. Ransom: As to the land? Are you limiting it to the land?

Mr. O'Brien: Yes.

A. No objections were filed for the years 1916, 1917, 1918, as to land, or the total.

Q. But there were as to 1919?

A. 1919. 7245

By Mr. Ransom:

Q. As to what, can you tell?

The Master: He said as to the total, and he thought it included the land.

Mr. O'Brien: That is all. If something develops with Mr. Quinn's examination a week from today, I may ask to have Mr. Mulhall recalled.

7246 The Master: The burden will be on you, in accordance with my previous ruling.

Mr. O'Brien: It will be a continuance of the cross-examination.

The Master: Yes, but there will be no obligation on the part of the complainant to produce Mr. Mulhall.

CROSS-EXAMINATION BY MR. CLARK:

Q. That water grant which you said is owned by the City, does that include any upland?

A. No, between the water grant and the bulkhead line.

7247 Q. I mean the water grant, is that all land under water?

The Master: You mean the property to the east of Lot 360?

Mr. Clark: Yes.

The Witness: I do not understand the question.

Q. Our map shows this lot No. 360 running to the river. What was between Lot 360 and the river?

The Master: There is a question whether it runs to the river or not. There seems to be a line on Exhibit 178 which would carry it to

7248 the west of the bulkhead. I simply asked the question in the event that it turned out afterwards that it did include the bulkhead, so that we would have the testimony.

By Mr. O'Brien:

Q. If this was not water front property would you take off $500, a lot?

A. Well, it is contiguous to the water, and we add a little.

By Mr. Clark: 7249

Q. As a matter of fact there is nothing on the physical property itself to mark the boundary before you come to the water, is there?

A. Well, there is the bulkhead there.

Q. There is nothing to mark off the bulkhead from the rest of the property?

A. From the water grant, no. I cannot say whether the bulkhead is on the water grant or on the property. If the bulkhead is on the property the property is worth a good deal more money.

REDIRECT-EXAMINATION BY MR. RANSOM:

Q. These dimensions you have given regarding 7250
Lot 360, and the easement, have been taken from a copy of the Tax Map for 1919, which is placed before you for your work?

A. Yes, sir.

Q. And that map is kept corrected and up to date by the surveyors of the Tax Department?

A. Changes are made on application of owners of property.

Q. And this lay-out of the easement on this map was made by the surveyor for your information?

A. Yes.

Q. Are you sure that there was any application made by the complainant with respect to the 1919 7251
assessment, so far as land is concerned?

A. Well, I have the application here.

Q. Have you the application here?

A. I have a copy of it.

Q. Let me see it.

Mr. Ransom: I offer it in evidence. I am willing to have the copy that I have marked in evidence. There was made with respect to

7252 each of the parcels of the Consolidated Ga
Company an application in similar form, tha
is, an application that the assessed value o
the improvements should be reduced on ac
count of the circumstances set forth therein

Mr. O'Brien: Your Honor, this is so argu
mentative, and I object.

The Master: I want to get this on the record

By the Master:

Q. Mr. Mulhall, you have testified that your un
derstanding was that an application had been mad
to reduce that parcel of land, to reduce your assess
7253 ment for tax purposes. Is that correct?

A. That is correct.

Q. You have now produced in court what you sa
is a copy of the application filed with your Board

A. Yes, sir.

Q. This was given to you by whom?

A. By the man who has the records in charge
It is part of our official records.

Q. And it is upon this paper that you made th
statement that you did make?

A. Yes, sir.

Q. I call your attention to the fact that thi
application in substance is to strike out from you
7254 assessment on the property as made the valu
given by you for the improvements thereon. D
you now so understand it? I will read from thi
paper. It has at the top of it, "Block 2583, Lo
360, assessed value of land $67,000, total assess
ment, $72,500. Assessment should be fixed a
$67,000."

That means that you assessed the land at $67,
000?

A. Yes, sir. 7255

Q. And the improvements at $5,500?

A. Yes, sir.

Q. Making a total of $72,500?

A. Yes, sir.

Q. Their application was to have it reduced to $67,000, was it not?

A. Yes.

Q. Now, in this application they stated this: "The said improvements, therefore, on October 1, 1918, had no value for purposes of taxation. The extent of such overvaluation in the assessment of each lot is the difference between the assessed value of the land and the total assessment, and each assessment should be reduced to the assessed value of the land." 7256

As I understand it, this statement is that you should not have added anything for the improvements. Now, it is this paper that I have read from to which you referred when you said an objection had been made to your assessment of the land value?

A. Yes.

Q. Do you now understand that the attack was made on the improvement value rather than on the land value? 7257

A. The total value.

Mr. Ransom: I offer that in evidence.

Mr. O'Brien: I object to it. The record is complete on the subject.

Mr. Ransom: It is not complete without that.

Mr. O'Brien: Let it go. We will have a lot of them here on next Wednesday.

7258 Mr. Ransom: I have a copy of it here which I am willing to have marked, with Mr. O'Brien's consent, but I offer that in evidence.

Mr. O'Brien: The claim on which you requested a reduction is purely argumentative. Your Honor, I will have all of these in court next Wednesday anyway.

The Master: Upon the statement of counsel for the District Attorney that he will have in court the original of the paper referred to by the witness the objection of Mr. O'Brien to the reception of this copy, which has not been
7259 identified except as the witness has stated that the paper came from the records of the Tax Department, will be sustained.

Mr. Ransom: I except to your Honor's ruling. May this document be considered in evidence subject to the production of the original?

The Master: No. I will permit you, if Mr. O'Brien does not produce the original, to resubpœna the original and put it in in connection with this witness' testimony.

Adjourned to Wednesday, September 3, 1919, at
7260 one o'clock P. M.

Last Complainant's Exhibit 206.
Last Defendants' Exhibit—U.

CONSOLIDATED GAS COMPANY OF NEW YORK vs. NEWTON, ETC., *et al.* 7261

Before ABRAHAM S. GILBERT, Special Master.

NEW YORK, September 3, 1919.

Met pursuant to adjournment.

Present: MR. RANSOM, MR. VILAS, MR. GOETZ, of Counsel for Complainant.
MR. CHAMBERS, of Counsel for defendant Newton.
MR. HAYWARD, MR. CLARK and ELY 7262
NEUMANN, of Counsel for Public Service Commission.
MR. O'BRIEN, of Counsel for defendant Swann.

JOSEPH QUINN resumed the stand.

CROSS-EXAMINATION (CONTINUED) BY MR. CHAMBERS:

Q. Mr. Quinn, take lot 6, block 978.

A. I have it.

Q. Lot 6, block 978?

A. Yes, sir. 7263

Q. Will you tell me first the dimensions of that lot which you used in placing the valuation on it of $365,000?

A. On Avenue A 46 feet.

Q. It appears to be 92 feet here. Are you right there, on Avenue A?

Mr. Ransom: You asked for the whole block, and not merely for one lot.

7264 Mr. Chambers: No, I asked for lot 6. In that block is lot 5 and lots 1, 2 and 3. I am only asking about lot 6.

The Witness: Well, I am giving you the dimensions of lot 6 as I have it.

Q. All right.

A. 46 feet on Avenue A.

Q. All right. East 21st street?

A. East 21st Street 666 feet.

Q. Yes. Avenue B?

A. 184 feet.

Q. East 20th street?

7265 A. 596 feet.

Q. And then what is the line that brings us back to the place of beginning, north from East 20th street? You have not closed up the gap there yet.

A. Well, we run north on Avenue A.

Q. How far from Avenue A is that line on East 20th street?

A. 70 feet.

Q. Then you begin 70 feet east of Avenue A?

A. Yes.

Q. And you run northerly how far?

A. 92 feet.

Q. 92 feet; then easterly?

7266 A. 25 feet 6 inches.

Q. Yes; then northerly 23 feet?

A. 23 feet.

Q. Then westerly?

A. 25 feet 6 inches.

Q. Then northerly?

A. 23 feet.

Q. Then westerly 70 feet?

A. 70 feet westerly.

Q. To the place of beginning on Avenue A? 7267

A. Yes, sir.

Q. Now, is that just the same to-day, that block as you have described it? Have there been any changes?

A. For 1919, that the way I found it.

Q. For the 1919 taxes?

A. For the 1919 taxes, that is the condition I found it in.

Q. How about 1920 taxes; any change?

The Master: As to the area.

The Witness: So far?

Q. That is what I mean. 7268

A. So far I found no changes.

The Master: That map has not been changed as to the area?

The Witness: No.

Mr. Chambers: Just here I call your Honor's attention to the fact that this encroaches on lot 5, upon this pink, I mean it is different; in other words, lot 5 will be smaller now.

Q. That is the area that you placed a valuation of $365,000 on, the one you have just described?

A. Yes, sir.

Q. What have you for lot 5, that same block, 978, have you such a lot? 7269

A. Lot 5, yes, sir.

Q. Will you describe the dimensions of that, right around each side?

A. Yes, sir. Lot 5 runs 46 feet front on Avenue A, thence easterly 70 feet.

Q. Yes.

A. Thence southerly?

Q. Yes.

7270 A. 23 feet.

Q. Yes.

A. Thence easterly 25 feet 6 inches.

Q. Yes.

A. Thence southerly 23 feet.

Q. Yes.

A. Thence westerly.

Q. Yes.

A. 95 feet 6 inches. Then northerly on Avenue A for 46 feet.

Q. And you placed a valuation on that of $17,000?

7271 A. Yes, sir.

Q. Is there any change in that for the 1920 taxes in the area?

A. No, sir.

Q. Did you value those two lots for the taxes in 1918?

A. 1918, no, sir.

Q. Did you in 1917?

A. No, sir.

Q. Who was your predecessor in the tax department who placed a valuation on those two lots for 1918, 1917 and 1916, do you know?

A. For '18 and '17, Mr. Henry Beyer.

7272 Q. And for 1916 do you know?

A. For 1916 I would have to look up the book, the annual record.

Q. Were those two lots assessed to the Consolidated Gas Company, speaking of Lots 6 and 5, that you described?

Mr. Ransom: For what year?

Mr. Chambers: For the last year.

The Witness: 1919?

Q. Yes? 7273

A. That is the New York Gas Light Company, is the name that appears on my record here, for Lot 5.

Q. Just a minute. You assessed it then not to the Consolidated Gas Company, but to the New York Gas Light Company?

A. I assessed it against the block and lot number as they existed upon the map, but the name of record that is on my field book is the New York Gas Light Company, for Lot 5, and Lot 6 is New York Gas Light Company.

Q. There isn't any doubt but what they are the owners to whom the bill was made out, is there? 7274

A. I don't know, I have no jurisdiction over the making out of the bills at all.

Q. Well, they purport to be the owner there?

Mr. Ransom: The New York Gas Light Company was consolidated out of existence some years ago, as the records in this case show, by merger under a legislative act.

Mr. Chambers: I am still carrying him on the tax maps.

The Master: It is not at all important, what appears on the tax maps. In more instances than otherwise the names on the tax maps are 7275 incorrect—or on the tax lists.

Q. What did you find on Lot 5, Mr. Quinn, do you remember?

A. On Lot 5?

Q. Yes, any improvements?

A. Yes, there was a building on that, sir.

Q. Is that the only notation you have, one building?

7276 A. I have a building, yes, sir, a two-story building.

Q. Any further description of it?

A. On Lot 5? No, sir.

Q. Did you make the assessment of Lot 5, Block 978, with the improvements thereon?

A. For 1919?

Q. 1919, yes.

A. Yes, sir.

Q. And did you do the same for Lot 6, Block 978—that is, assess it with the improvements thereon?

7277 A. For 1919?

Q. 1919.

A. Yes, sir.

Q. What did you find on Lot 6?

Mr. Ransom: I object to the question as not within the scope of cross examination.

Mr. Chambers: Why, it is identically so.

The Master: I think so. Objection overruled.

Mr. Ransom: Exception.

A. On Lot 6, coal houses, purifying stations, or houses, and machinery.

Q. I want you to give me just exactly the descrip-

7278 tion you have got—all you have got?

A. Well, I have got that the land was practically covered with one and two-story buildings.

Q. One or two-story buildings?

A. One and two story.

Q. The whole lot, do you mean, was covered?

A. Why, there was—the buildings as far as I can remember did not cover the entire lot.

Q. But you have not any other description, have 7279
you?

A. No, sir.

Q. Take Lot 37. Have you that?

A. In what block, sir?

Q. 987.

A. Yes, sir.

Q. What dimensions have you for the lot that you valued for the taxes of 1919?

A. Block 987, Lot 37?

Q. Yes, sir.

A. Beginning at a point on the northeast corner of 20th Street and Avenue B, running northerly 7280
184 feet to the southeast corner of 21st Street.

Q. Thence easterly?

A. Thence easterly 77 feet.

Q. Just an even 77 feet; is that right?

A. Well, there is a little angle in here.

Mr. Ransom: That is that old Marginal Street.

The Witness: It is the Marginal Street question.

Q. I want it just the way you have got it, so that we know what your value is. 77 feet?

A. Yes, sir, plus or minus.

Q. Plus or minus? 7281

A. Yes.

Q. Then it seems to run in kind of a southeasterly direction?

A. Yes.

Q. How many feet?

A. About 7 feet that is.

Q. How many feet?

A. About 7 feet.

7282 Q. Then that hypothenuse of that triangle——

A. That runs along like the Marginal Street does, you see.

Q. How many feet?

A. Why, I have not got the dimensions of that.

Q. I see. How many feet on East 20th Street?

A. 215 feet westerly to the point of beginning.

Q. To the east of that Lot 37, Block 987 on Marginal Street—well, everything east of that line that you have given, on the east, is Marginal Street on your map, is it?

A. But the City has a strip along there.

7283 Q. How much of a strip on Marginal Street?

A. About 23 feet.

Q. You mean the City owns some land that is not street?

A. Yes.

Q. That is the City owns a strip on the westerly side of Marginal Street——

Mr. Ransom: I object to the question as to form. He does not know.

The Master: The question was not finished, Mr. Ransom.

Q. There is a strip on the westerly side of Marginal Street, running the entire easterly face of this

7284 lot and block, which is designated on your map as city property?

A. As Lot 57.

Q. As Lot 57, the City of New York?

A. City of New York. As far as the records are concerned the City of New York.

Q. That is not the street, though, that strip?

A. No, sir.

Q. Then to the east of that strip goes marginal 7285
street; is that right?

A. Yes, sir.

Q. What lot was that, that strip?

A. 57.

Q. You did not assess Lot 57 to anybody, did you?

A. No, sir, it is an exempt piece.

Q. What?

A. It is an exempt piece.

Q. Because it is in the name of the City?

A. Of the City.

Q. Just take a look at this Exhibit 178, page 5, 7286
and look at that same lot and block. According to the dimensions you gave that strip is included in pink?

Mr. Ransom: I object to the question.

The Master: I will allow it.

Mr. Chambers: The question is, is it in pink on Exhibit 178, that strip?

Mr. Ransom: I object to the question.

The Master: I will allow it.

Mr. Ransom: Exception. The paper speaks for itself.

Mr. Chambers: If I can get your witness to identify it as being in pink, that ends it. 7287

Mr. Ransom: The dimensions given speak for themselves. I take it that we cannot try out in this case any question as to the status of the rights of the City or the company there.

Mr. Chambers: You claimed it.

Mr. O'Brien: The fact is it is shown here in pink and claimed by the company.

Mr. Ransom: And we prove for our larger

7288 area the value which you say was given by the city and State to smaller areas.

The Witness: I find here that this exhibit includes Lot 57.

Q. In pink?

A. Well, in pink, if that is what you call in pink.

Q. Meaning Exhibit 178? The one you have is Exhibit 178.

A. That is Exhibit 178; yes, sir.

The Master: That pink section there that is marked as Lot 37 is somewhat larger than your lot 57, isn't it?

7289 The Witness: Well, this is 238 feet.

Q. Well, I say this lot 37 on Exhibit 178 is somewhat larger?

A. It includes that lot 57.

The Master: I notice that you said includes the four, but it is somewhat larger than your lot.

The Witness: Than my lot 37.

Mr. Chambers: 57 is the strip?

The Witness: 57 is the strip, yes.

Mr. Chambers: What the Court means is that lot 37 is larger on this exhibit 178 than yours.

7296 The Master: In that it includes your lot 57?

The Witness: Yes, sir.

Q. Now, to go back to lot 5, block 978, the one I spoke of secondly to-day, was that in your opinion —did you value that at its full value when you placed a valuation of $17,000 upon it?

A. Yes, sir.

Q. And lot 6, in block 978, the one I spoke of

firstly here to-day, in placing a valuation of $365,- 7291
000 on that, did you value it at its full value?

A. Yes, sir.

Q. And lot 37 in block 987 that you described, did you value that at its full valuation?

A. Yes, sir.

Q. Go back to the same lot 5, how did you reach the valuation of that lot, lot 5 in block 978, how did you value it?

A. I took it on the basis of about $440 a front foot.

Q. On Avenue A?

A. On Avenue A.

Q. And lot 6, in block 978, how did you value 7292
that?

A. I valued that on the basis on Avenue B, 184 feet, of $340 a front foot.

Q. How deep did you make those?

A. I made those lots 100 feet deep.

Q. How many lots did you make there?

A. I took it, as I told you, 184 feet.

Q. And on East 21st street, that same lot and block?

A. On East 21st street I took 466 feet at $260 a front foot.

Q. On East 20th street, lot 6, block 978? 7293

A. On East 20th street, 466 feet at $260 a front foot.

Q. What did you value that little corner up on the northwest corner, on Avenue A?

A. In other words, you mean the southeast corner of 21st street?

Q. Yes.

7294 A. The southeast corner of 21st street, 46 feet, at $440 a front foot, with a corner value of 50%.

Q. What plottage did you figure on that lot 6?

A. About ten per cent.

Q. Did you allow for the other two corners, the East 21st street and Avenue B corner, and the East 20th street and Avenue B corner?

A. On the corner of Avenue B and 20th street, and at the corner of Avenue B and 21st street?

Q. Yes.

A. I allowed 40% on each corner.

Q. On lot 5, block 978, did you allow anything
7295 for plottage there?

A. No, sir.

Q. Block 987, lot 37, did you allow any plottage there, and if so, how much?

A. Ten per cent.

Q. What did you allow for the corners of East 20th street and East 21st street and Avenue B, for that lot, anything?

A. For the corner?

Q. You have two corners there.

A. I allowed 50%.

Q. How did you value that lot 37, block 987, on Avenue B, how much a front foot?

7296 A. $320.

Q. How many feet did you figure?

A. I took 184 feet front.

Q. And what did you do with that lot as to East 21st Street, how did you figure that?

A. I added 50 per cent on for that corner.

Q. I mean as to the front footage. It is 77 feet deep. Did you allow anything on East 21st Street for frontage?

A. I included that in my Avenue B lot. 7297

Q. What frontage did you allow on East 20th for Lot 37, Block 987?

A. On East 20th Street I took about 115 feet.

Q. At how much a front foot?

A. At about $300.

Q. What was on that Block 987, Lot 37, what improvements, or what was on it?

A. For 1919?

Q. Yes, sir.

A. There was a small tank, and there was a government plant that was built there.

Q. Did you assess it with the improvements on 7298
it for 1919?

A. Yes, sir.

Q. Did you include that government property?

A. Yes, sir.

Q. In your assessment?

A. Yes, sir.

Q. Is Marginal Street along the water?

A. Yes, sir.

Q. Most of that block and lot was occupied by the government buildings, was it not?

Mr. Ransom: I object to the question as incompetent and not within the scope of cross-examination. 7299

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. What government building did you see on there?

Mr. Ransom: I object to the question on the grounds already indicated.

The Master: Objection sustained.

Mr. Chambers: Exception.

7300 Q. Did you assess that lot and block for 1918 taxes?

A. Block 987, Lot 37?

Q. Yes.

A. No, sir.

Q. Nor 1917 taxes?

A. No, sir.

Q. Nor 1916 taxes?

A. No, sir.

Q. Did you value that at its full valuation?

Mr. Ransom: He has already answered that.

The Master: I will let him ask it again.

7301 A. Yes, sir.

Mr. Chambers: That is all.

The Master: Mr. O'Brien, have you any questions?

CROSS-EXAMINATION BY MR. O'BRIEN:

Q. Mr. Quinn, speaking about this property here on 21st Street, Block 953, do you know when this company originally acquired this property and what they paid for it?

Mr. Ransom: I object to that as incompetent, and immaterial.

The Master: Objection overruled.

Mr. Ransom: Exception.

7302 The Master: It is very important as bearing on this witness' judgment of value.

A. No, sir, I have no record of when they acquired it.

Q. In making your assessments, then, you did not enter into the question as to when it was purchased, or whether it was purchased as a whole block, or whether is was in smaller plots, or how and when they were assembled?

A. No, sir. 7303

Q. Would your answer be the same as to Block 979, Block 952, Lot 7, Lot 35, Lot 30 and Lot 29?

The Master: Do you want Block 979 first?

Mr. O'Brien: Perhaps we had better take them up separately. Lot 1, Block 979.

A. No, sir.

The Master: Your answer is the same?

The Witness: Yes, sir.

The Master: That is, you have no knowledge as to how it was assembled or when it was bought, or what was paid for it?

The Witness: That is right. 7304

Q. Will your answers be the same as to Block 952, Lots 7, 35, 30 and 29?

A. My answer is the same.

Q. And will your answer be the same as to Block 978, Lots 5 and 6?

A. Yes, sir.

Q. And Block 987, Lot 37?

A. Yes, sir.

Q. And Lot 35 in Block 951?

A. Yes, sir.

Q. Will your answers be the same as to the other properties that you have testified to in this hearing? 7305

The Master: So far as you now recall?

The Witness: Yes, so far as my memory serves me.

The Master: In order to be more definite about it you would have to go back to your previous and other books and check it up?

The Witness: I am answering the question from a new field book. There may be some

7306 information in the other field books, but this is a brand new field book.

The Master: To the best of your recollection, at the present time, in assessing any of these properties for 1919, you do not recall having before you the price paid by the Gas Company for the properties at the time when they bought them, and whether they bought them in smaller parcels and assembled them.

The Witness: No, I have no recollection of that.

Q. Well, is there some other field book you
7307 haven't brought here?

A. Why, no, but there is a field book which goes back to the years 1917, 1916, 1915, 1913 and 1914 which I haven't with me to-day.

Q. Well, what is your practice with regard to properties of this kind owned by public utility companies?

A. Why, to examine the property and to use our judgment in appraising it, or in assessing it.

Q. Do you go into it historically, I mean into the question of the valuations, the history of the valuations?

A. Not necessarily.

7308 Q. Well, do you do it as a matter of practice?

A. No, we do not go into the history of values.

The Master: But what in your mind it is worth at the time you are assessing it?

The Witness: Yes.

The Master: Not how much it was worth twenty years ago?

The Witness: No.

Q. Then it is safe to say that you exclude the question as to how much was paid for it some time ago by the present owners or their predecessors? 7309

Mr. Ransom: I object to the question.

The Master: I will allow it. I think the answer is apparent from what the witness has already said.

The Witness: Yes. In this case why I did not know.

The Master: Well, you really don't care, do you, from your point of view, as to how much a man or a concern paid for a piece of property many years ago, when you are fixing the present value of it? 7310

The Witness: No, sir.

The Master: I don't mean to indicate, Mr. O'Brien, that the witness is necessarily correcting his method of getting at it, but I want to make clear that it seemed to me quite clear that he did not do it, and that he did not think it was necessary.

Q. Now, taking this property here on the blocks I have just specifically mentioned, 953, 979, 952, 978, and lot 35 on block 951, you valued that land as separately from buildings, did you?

A. Yes, sir. 7311

Q. And irrespective of the buildings?

A. Yes, sir.

Q. You gave it the same value, did you, that you would vacant land across the street without any improvements on it, if the other land is similarly situated?

A. In proportion?

Q. Yes.

7312 A. Yes, sir.

Q. And the fact that it is used or not used for gas-making purposes, does not influence your value of the property to any extent?

The Master: Not at all, he said. Is that the answer, Mr. Quinn?

A. Yes, sir.

Mr. Chambers: May be he would not say that.

Mr. O'Brien: I just want to get the truth; that is all.

The Master: It is not so much the truth, but the accurate fact that you want to get; not necessarily the truth.

7313

The Witness: In other words, I considered that property the same as I would, you understand, the adjoining property of a similar size.

Q. Have you given it any added value because of the difficulty that might be experienced in getting it together at the present time?

A. At the present time I think it more advantageous to have the properties that you refer to in block front than it would be to get it in single lots, and for that reason I have added for plottage.

Q. Give me definitely as to the percentage of plot-

7314 tage?

The Master: He has given that.

Mr. O'Brien: I want it accurately.

The Master: He has given it parcel by parcel.

Q. About ten per cent, you said?

A. Approximately ten per cent.

Q. And that includes not only the general idea of plottage as known in the Tax Department, or in

real estate circles, but the difficulty in assembling 7315
it for gas making purposes?

A. For any purpose.

Q. Well, did you exclude the idea of gas making purposes in your adding an element for plottage?

A. I did.

Q. Did you make any investigation as to how much these properties were worth in 1905?

A. No, sir.

Q. Or 1906 or 1907?

A. No, sir.

Q. Take Block 953, bounded by First Avenue on the west, 22nd Street on the north, Avenue A on 7316
the east and 21st Street on the south, what were your units of value in your assessment of the property opposite Block 953 on First Avenue?

A. $480 a front foot. You mean for 1919, on the other side of the street?

Q. Yes, the other side of First Avenue, and the west?

A. $500 a front foot.

Q. Did you adopt the same unit of value for this block 953?

A. $480 a front foot.

Q. What was your unit on the next block below, on First Avenue, that is between 20th and 21st? 7317

A. On the westerly side of the Avenue, or on the easterly side?

Q. The easterly side of the Avenue?

A. $500 a front foot.

Q. What unit of value did you adopt for Lot 7 of Block 952?

A. $320 a front foot on 20th Street and $320 on 21st Street.

7318 Q. And what on Avenue A?

A. The lot does not front on Avenue A.

The Master: I do not think Mr. O'Brien's question is related particularly to the gas company's property.

Mr. O'Brien: For the lots. I am referring to Lots 35, 30 and 29.

The Witness: Oh, 35, 30 and 29? $440. a front foot.

Q. $440.?

A. Yes, sir.

Q. Would your valuation change there if you con-
7319 sidered them all there in one ownership, Lots 35, and 30 and 29?

A. Well, there are two intervening lots there, 33 and 34.

Q. Yes, did you consider them all in one ownership when you assessed them?

A. No, I figured just on the unit of $440. No, I did not figure them on that basis.

Q. You just adopted that unit right through?

A. Yes, sir.

Q. Did you add the same unit on Block 953 as to that portion which faces on Avenue A?

A. Yes, sir.

7320 Q. And the same on the other side of the street, Block 978, the other side of Avenue A—Block 978 and Block 979?

A. Blocks 978 and 979 are the same, yes, sir.

Q. You assessed the empty building on Lot No. 30?

Mr. Ransom: I object to the question. It assumes a state of facts not proven.

Mr. O'Brien: Yes, it is proven.

Mr. Ransom: By your unsworn statements. 7321

Mr. O'Brien: No, it is proven by the witness Alrich.

Mr. Ransom: I object to the question as to form, as not within the scope of cross-examination.

The Master: I will allow the question as to whether the witness appraised that lot with that improvement on it.

A. Will you repeat the question?

(The stenographer repeated the question.)

Mr. Ransom: That is not the question that the Master has allowed, however.

The Master: I will allow the witness to 7322 state whether he assessed Lot 30 of Block 952, with the improvement on it.

The Witness: Yes, sir.

Q. Mr. Quinn, in your assessment of these properties do you make any deduction from the value of the land where there is a huge structure that might be in real estate terms called an elephant—for the removal of the structure?

Mr. Ransom: I object to the question as incompetent in form.

The Master: I will allow it.

Mr. Ransom: Exception. It seems to me 7323 that that question is absolutely unintelligible in form.

The Master: It cannot be so bad. I think I understand it.

Mr. Ransom: I think if the Master does, he is probably the only one in the court room who does.

The Master: If you take vacant property

7324 with a structure on it, that is absolutely useless and must be removed in order to improve the property, would you deduct anything from your unit value because of the expense of removing the improvement that is a useless thing and would have to be taken away?

Mr. Ransom: I object to the question in that form. This witness cannot pass upon the usefulness of it for gas purposes.

The Master: He has not. He has been asked a question on cross-examination and I am allowing it.

7325 The Witness: Would I deduct from the land value?

The Master: Yes. Take a piece of land unimproved worth $100,000.; it has something on it that is obsolete, useless, and must be taken away before that land can be improved. Now, would you deduct from that $100,000. the cost of removing that thing that is on that land before it can be used?

The Witness: Absolutely not.

The Master: That is what Mr. O'Brien wants to know.

Mr. Ransom: I think the Master is the only
7326 one who understood the question.

Mr. O'Brien: I will put it in another form.

The Master: Did I not put it for you? Haven't you got your answer?

Mr. O'Brien: Spendidly.

The Master: Then do not put it in another form. Ask the next question.

Q. Take territory in the city, Mr. Quinn, land in the city that has another kind of an elephant on

it in the shape of rock formation; isn't it cus- 7327
tomary to consider the amount that would have to be paid to remove the rock?

A. If there was rock on the property I would consider that rock when I was making the appraisement on it, in my unit of value.

Q. You would not add to the value of the land if it had a lot of rock on it, would you?

A. No, sir; but my assessment would show that I considered the rock that was on it.

Q. But in this case, however, in determining as of October 1, 1918, the fair average value of the land, or in one of the terms that is used—— 7328

Mr. Ransom: What it would sell for under ordinary circumstances.

Q. (Continued)—what it would sell for under ordinary circumstances—you did not consider the amount of bricks and mortar and debris that would have to be removed if used by some one else?

The Master: He has answered that. I will not let him answer it again. He said no.

Q. That element had not been included in your assessment?

A. No.

Q. Does your field book show the kind of structures that are located on these lands in Blocks 7329
953, 952, 979, 978 and 951?

The Master: I think he has told Mr. Chambers what his field books shows as to every parcel, Mr. O'Brien.

Mr. O'Brien: Your Honor, he has not covered this, and I want the record clear, because this is a vital element in this case.

The Master: Mr. Chambers, didn't you ask

7330 the witness as to each parcel what these field books showed—the value of improvements on it?

Mr. Chambers: Beg pardon?

The Master: I wanted to make sure about my ruling here. Did you not ask this witness to tell you the character of improvement that he found on each one of these parcels?

Mr. Chambers: But I asked him to tell what he found on the property—all that he found.

The Master: Yes, as to each parcel.

Mr. O'Brien: Not as to whether the nota-
7331 tions were in his field book.

Mr. Chambers: I thought I asked him about all. I may have skipped some.

The Master: I will not allow the question.

Mr. Chambers: I asked him to give me all he had.

The Master: That is what I thought.

Mr. O'Brien: That is too vague on the record to satisfy my purposes, and I press the question. I want to say that this is vital here for the reason that the witness was asked what this would bring under ordinary conditions in the market.

7332 The Master: I know your point.

Mr. O'Brien: And I want to know whether the book that was used by counsel for the complainant to refresh the witness' memory, and as to which he frequently referred, has records of what we call useless and in many cases unused property which would have to be removed.

The Master: I got your point. I think it 7333
has been covered, that is all.

The Master: Take this block 952 and answer the question with relation to that block, Mr. Quinn, what kind of structures does your field book show on that?

Mr. Ransom: This is, of course, allowed over my objection and exception?

The Master: Yes.

Mr. O'Brien: Let me say at this point, your Honor, that when the witnesses were called, I tried to show to the Court that while Deputy Tax Commissioners deal with real estate values 7334
from year to year, they are working with the machinery of the tax department of the city, sometimes a fixed rule that is uniformly adopted throughout the city, sometimes the direction of the tax commissioners who ultimately make these valuations, and by the traditions of the department, the previous assessments and so on. Now, if the field books bear memoranda of existing structures which we contend go seriously to the value of the property, then I would like to have it shown on the record.

The Master: The only difference between 7335
you and me is that I think it is already in the record. I am going to let him answer this question.

By the Master:

Q. What does your field book show on this property?

A. A gas holder and a coal yard and building.

Q. These notes in your field book as to the char-

7336 acter of the improvement, are they intended to be inclusive, so as to be able to describe in detail the character of the structures you found there?

A. No, they do not explain the detail.

Q. What is the purpose of this memoranda you find in your field book?

A. The purpose of the memoranda in the field book is—for instance, we have a gas holder or gasometer, which means that there is a big gas holder there and the plant and machinery also.

The Master: Mr. Chambers, in cross-examining, you asked from time to time that he state

7337 what he found on these properties.

Q. In answering these questions, I noticed that you referred to your field book?

A. Yes, sir.

Q. In giving the answers to Mr. Chambers did you tell him what you found in your field book?

A. Yes, sir.

Q. So that if Mr. O'Brien now proceeds to ask you in each case what your field book shows, your answers would be just what you have already given to Mr. Chambers?

A. Yes, sir.

Mr. Ransom: Your Honor allowed this on

7338 the theory that these notations were simply some indication or indentification of the property.

The Master: I will take it on Mr. O'Brien's statement, but I do not want to go over it again. I will accept the witness' testimony as to what he found there and take such other testimony as may be offered as indicating the

character of the buildings, as bearing on the 7339
value of these lots. The witness has testified that in arriving at the value he gave these lots, he disregarded any expense anybody might be put to in removing anything that is now on there for the purpose of adapting it to other uses.

Mr. Ransom: He also said that he disregarded any improvements. The plaintiff was not interrogated as to improvements or the value of the land with improvements.

The Master: I know that, Mr. Ransom. The situation is perfectly clear so far as this record 7340
is concerned, that he has disregarded anything that Mr. O'Brien refers to as useless improvements, and he has disregarded the expense of getting them off the lot in fixing his unit of value. Am I right, Mr. Quinn?

The Witness: Yes.

Mr. O'Brien: My questions are directed to the practice of the field book.

By Mr. O'Brien:

Q. The field book, while it contains general references to improvements, does not purport to set forth with any detail the character of the buildings, the dimensions, the quantity of material in them, 7341
and so on?

A. No, it does not.

Q. Those are pencil memoranda that you refer to?

A. The field book contains, as far as the improvements are concerned, to a certain degree the sizes of the buildings, but it does not contain the details

7342 of the material or the quantity used or anything of that kind.

The Master: Or the thickness of walls?

The Witness: No, sir.

Q. You don't go into foundations at all, do you?

A. I look at them when the buildings are going up.

Q. In your field book you have no notation as to the depths of the foundations?

A. No.

Q. Or the character of the soil?

A. We have not.

7343 Q. Or the question whether it is rock, or swampy filled-in land?

A. That notation would probably be made by a deputy who came across those various conditions.

By the Master:

Q. The practice is to give it to the district man there when he finds those conditions?

A. When he finds those conditions he would naturally make those notations.

Q. And they would carry along from one man to another?

A. Yes, sir.

Q. So when you looked at a piece of property you

7344 would have a notation made by your predecessor, or by yourself, that this is filled-in ground, or bad bottom, or rocky, or something else?

A. Yes, sir.

By Mr. O'Brien:

Q. Where there are buildings up you don't enter into that question?

A. No.

Q. Take the generator house on Block 979, the

buildings are standing there with pretty thick 7345
walls, and you didn't go into the question of how deep the foundations are?

A. I did not.

Q. Or how much would have to be done to take that away in order that some other improvement could follow when it got into the hands of some vendee buying in the open market and not under force?

A. I did not.

Q. What are your units of value on the north side of Block 951, that is, on the south side of East 20th Street, on property other than that of the com- 7346
plainant?

A. South side of 20th Street between Avenue A and First Avenue—$280 a front foot.

Q. And on the First Avenue side of that block?

A. $500.

Q. And the Avenue A side of the block?

A. $440.

Q. Just to the north on First Avenue, on that part of Block 952 not used by the company, was the same unit used there, $500? That is, on the east side of First Avenue between 20th and 21st Streets?

A. No, sir. The unit on that is $460.

The Master: Is it the same unit that you 7347
used for the gas company on that side of the street?

Mr. Ransom: The gas company is not on that side of the street.

Q. The buildings on the west side of First Avenue from 19th Street to 22nd Street are tenement houses generally, are they not?

A. Yes, sir.

7348 Q. Tenement houses of the old type?

A. Yes, sir, old four-story buildings.

Q. Does that same class of improvements prevail on 20th Street, 19th Street, 21st Street and 22nd Street, right through to Third Avenue?

A. Right through to Third Avenue—why, tenement houses.

Q. Tenement houses and stables?

A. Tenement house district, yes, sir.

Q. With stables here and there?

A. Yes, sir.

Q. In assessing Lot No. 35, Block 951, did you
7349 give that any added valuation? That is where the coke company stables are. Did you give that any added valuation for the reason that it was used in connection with the gas company's property?

A. No, sir.

Q. You gave a valuation of some $15,000, to Lot 29 in Block 952, that little lot on the corner?

A. Yes, sir.

Q. You adopted that unit right straight through on that frontage?

A. Yes, sir.

Q. Irrespective of that being a corner, didn't you?

7350 A. No, sir, it was figured on the basis of a corner also.

Q. Did you consider it being in the one ownership with the rest of the property to the north?

A. No, sir.

Q. A separate ownership?

A. It was considered by itself as Lot 29.

Q. Well, it could not be improved?

A. Well, it is not assessed as improved.

Q. I know, but in making the value for a plot 7351
20 feet by 70, its usability would go into your mental operation, wouldn't it?

A. Why, yes, but that is considered in making the assessment. In other words, it is considered on a depth of 70 feet on that unit.

The Master: And a width of 20 feet?

The Witness: And a width of 20 feet.

Mr. O'Brien: It could not be used for anything, could it?

The Master: Why couldn't that be improved, Mr. O'Brien?

Mr. O'Brien: Well, there isn't anything that 7352
I know of that can be put on it, your Honor.

The Master: There are a good many things I know that could be put on it.

Mr. O'Brien: It might if it was on Broadway be used to hold somebody, but you could not put a tenement house on it or a factory.

The Master: You can put something on every corner of New York 20 by 70.

Mr. O'Brien: I am talking about practical purposes, your Honor.

The Master: For very practical purposes, too.

Mr. Ransom: And plots of that size are used 7353
all over the City.

The Master: Don't let us go into that discussion, but I just wanted Mr. O'Brien's view as to why a lot 20 by 70 on any corner in New York could not be improved.

Mr. O'Brien: On Broadway you might make an office building of it, but not over on First Avenue. I am not talking about the physical

7354 ways in which it can be used, irrespective of the laws of the City.

The Master: Well, it could be used for something.

Mr. O'Brien: Oh, yes, if it was out in Arverne, they could use it.

The Master: They can use it up there.

Mr. O'Brien: They would put small bungalows on it down along the Rockaway Beach there.

The Master: I thought you had in mind that there was something about the physical aspect of it that would make it impossible for use.

7355 Q. Well, I suppose, Mr. Quinn, that you used your units of value here, 8480, was it, or 8420—you used them irrespective of these lines that are on these lots; you considered it just as one piece straight away from 20th Street to 21st Street, didn't you?

A. Are you referring to Avenue A now?

Q. Yes, Avenue A, you just took that as of one ownership?

A. I assessed them irrespective of ownership.

The Master: And irrespective of the width of the lots except——

7356 The Witness: As per the physical condition of the ground on the tax map.

The Master: What I want to make clear is this, when you came over to Block 952, on Avenue A?

The Witness: Yes, sir.

The Master: And you reached a conclusion as to what the frontage is worth?

The Witness: Yes, sir.

The Master: And you reached the conclu- 7357
sion of $440 a front foot?

The Witness: Yes, sir.

The Master: That is based on a 25 by 100 foot lot?

The Witness: That is right.

The Master: Without regard to whether one or more lots is in the one ownership or as to whether they are corners?

The Witness: Yes, sir.

The Master: When you came to these lots 20 by 70, you took the proposition which that bears to a full lot?

The Witness: Absolutely. 7358

The Master: Then when you came to lot 29, which is a corner lot, you added something for its being a corner?

The Witness: Yes, sir.

The Master: Taking that small lot and the proportion of $480 per front foot on Avenue A?

The Witness: Yes, sir.

The Master: On that basis figured it, with something more for the corner.

The Witness: Yes, and irrespective of ownership. 7359

The Master: Irrespective of ownership?

The Witness: Yes.

The Master: Now, to make Mr. O'Brien's point perfectly clear in spite of the fact it is a small lot, only 20 feet wide on Avenue A and 70 feet deep on 20th Street, you still added a percentage of the unit of value to it as a corner lot?

7360 The Witness: As a corner lot, yes.

The Master: Are you trying to prove it as worth more than what the witness says?

Mr. O'Brien: No; I want to find out, though, if he gave it an added value by reason of its being a key to the corner, just as though it was in separate ownership.

The Master: You can ask him that.

Mr. Ransom: Do you claim it is worth less?

The Master: Did you put any special value on it——

Mr. O'Brien: It is not worth very much,
7361 when there is a pile of junk on it, Judge.

The Master: Just a minute, Mr. O'Brien. Did you add anything to it because you thought it might be a key to a corner?

The Witness: No, sir, because it is not a key, it is a corner itself.

Q. Mr. Quinn, on the south side of 20th Street, opposite Block 978, what is the character of the improvements?

The Master: Between First and Second Avenues, I imagine.

Mr. O'Brien: No, this will be between Avenue A and Avenue B.

7362 The Witness: A stable block particularly.

Q. Some vacant yards?

A. Well, small improvements on them, like two-story buildings that are——

Q. Shacks, sheds?

A. Poultry markets.

Q. Chickens?

A. Chickens.

Q. And yards used for storage?

A. I guess they use them for storage, too. 7363

Q. Do you recall any activities within a radius of these several blocks, the five or six that I have mentioned, within a radius of four or five blocks, any activities in the real estate in the last ten years?

A. Some activity over on Avenue B in 19th and 20th Streets in the shape of garages that have gone up there.

Q. This is in an industrial zone?

A. Yes.

Q. On the zoning map of the city?

A. Yes.

The Master: You mean by that the unre- 7364
stricted section?

Q. It is a unrestricted section?

A. That is right.

Q. And under those restrictions since July 25, 1916?

A. I think that is the date.

Mr. O'Brien: The Court will put us right on that.

The Master: I think it was 1915, although I am not sure. It may have been 1916. Maybe you are right, July 25, 1916. Well, any way, since the zoning orders of 1915 or 1916. 7365

The Witness: Yes.

The Master: The City has been subdivided into zones?

The Witness: Yes.

The Master: And this zone is what is known as an unrestricted zone, which means that any kind of building can go up, is that correct?

The Witness: That is right.

7366 Q. And under the same resolutions, such buildings are excluded from residential and business sections or business zones?

A. Yes.

The Master: In your opinion does that add to the value of property over here or detract from the value?

The Witness: To the property over east here in this section?

The Master: Yes.

The Witness: I think it adds to the property over here.

7367 The Master: It is driving enterprises over there that do not find room elsewhere.

The Witness: That is right.

Q. Mr. Quinn, referring to block 951, and that stable on lot 35, will you tell us what the character of the improvements is on the street with the stable?

A. Tenement houses, express company's stable, more tenement houses. As I say, they are cheap tenements, old tenements.

Q. The old type?

A. Yes, cheap, old type of tenements.

Q. The dumb bell types?

7368 A. The old type; the only thing is they haven't got the pump in the yard.

Q. And the school sites that were, but are not there now?

The Master: I think we all understand it is one of the very old type of tenement houses that are practically now obsolete and not permitted any more in New York; not permitted to be built.

The Witness: Yes.

Q. And the same type of houses runs all the way over to Third avenue, to Second and Third avenues, practically? 7369

A. Well, they are an old style tenement, yes. There might be more improvements in them, in the line of——

Q. Well, you know the territory well enough to say that the new law tenements have not been erected in this section for half a mile.

A. That is right; there isn't many——

The Master: As to the section a little farther west, the character of buildings, that is, the condition of the buildings is better? 7370

The Witness: Yes, but the buildings are old.

The Master: But the same general type?

The Witness: Yes.

Q. This section is known as the gas house district, is it?

Mr. Ransom: I object to it.

The Master: I will allow it.

Mr. O'Brien: It is very graphic. It is known as the gas house district?

The Witness: I have heard it called as such.

Q. On the north side of 19th street between First Avenue and Avenue A, will you refresh your memory and tell us the general character of the structures on the land there? 7371

A. Tenement houses, practically the entire block.

Q. You call them improvements, in the tax department?

A. Well, improvements, yes. A school on that block, I think.

Q. Where is the school?

7372 A. On the north side of 19th Street, near Avenue A.

Q. On Block 978, Lot 6, will you state what your field book shows to be the character and number of the buildings? I am getting over on this ground a bit.

Mr. Ransom: I object to the question as already asked and answered.

Mr. O'Brien: He has answered in general terms.

Mr. Ransom: I think it is incompetent in any event and not within the scope of the cross-examination. The question has already
7373 been asked and answered.

The Master: I will permit the witness to answer.

Mr. Ransom: Exception.

The Master: I am not entirely clear as to whether the question was asked before.

A. Is that Block 978, Lot 6?

Q. Yes.

A. The field book has the property marked as covered with one and two story buildings. Presumably they connect.

Mr. O'Brien: I may state, your Honor, right
7374 here, and I may as well make it clear, that the reason of that question—it has got to be cleared up later on, all these questions have.

The Master: But you won't get it from this witness.

Mr. O'Brien: I want to know what his book shows.

The Master: He has given us all that.

Mr. O'Brien: And the minuteness with which the assessment was made up. 7375

Mr. Ransom: You know what this book shows.

Mr. O'Brien: I want to state to your Honor the point here so that you will clearly understand as I move along through this case——

The Master: I think I do.

Mr. O'Brien: That Mr. Alrich kept describing separate buildings, and we assume that when we come to put a valuation on these structures they will attempt to assert that they have so many separate buildings, whereas 7376
they have got one building.

The Master: We will meet that when we come to it.

Mr. O'Brien: And will try to give it an added value as separate buildings, whereas it is one long Hindenburg wall down the street there, with the minute separations inside of the character described.

Mr. Ransom: Party walls.

The Master: We will meet that when we get to it.

Mr. O'Brien: Party walls, but not the same 7377
kind of a party wall generally described in a warranty deed. It is not a party wall.

Q. On East 20th Street, south of Block 987, that is opposite the structures that was used by the government last year, what is the character of the improvements? That would be east of Avenue B on the south side of 20th Street?

A. East of Avenue B there are two garages.

Q. Do you know when they were built?

7378 A. Yes, sir; in 1918.

Q. North of Block 979, that is on the south side of East 22nd Street between Avenue A and the Marginal Street, what is the general character of the structures standing there?

A. On the north side of 22nd Street, between Avenue A and Marginal Street?

Q. Yes.

A. Lumberyards and coal yards.

Q. Second hand lumber?

Mr. Ransom: I object to the question as immaterial.

7379 The Master: I will let him answer. Do you know whether they handle new or second hand lumber?

The Witness: No, I could not say. I think myself that it is new lumber.

Q. There are a number of second-hand lumber people in this neighborhood?

A. Yes, there are.

Q. Did you not give us all the sales that have taken place there within ten years, within a radius of five blocks, of all this property—meaning these several blocks I have mentioned this morning?

A. Did I give you the sales? No, sir, I did not.

7380 Q. You do not recall at this time any more sales?

Mr. Ransom: He has not been asked for them.

Mr. O'Brien: Yes, I asked him for sales.

A. I do not know but what all the sales that have happened in that territory in the last ten years would take me a week to answer it.

Mr. O'Brien: I move to strike out the answer.

The Master: No, I will let it stand. 7381

Mr. O'Brien: I will have to go into it now.

The Master: Then go into it.

Q. Has there been any marked activity in ten years in this section.

A. Not any great marked activity.

The Master: I did not get that.

The Witness: Not any marked activity.

Q. How many parcels do you have to assess in your district, Mr. Quinn?

A. As far as I can understand I think it is about——

Q. Ten thousand? 7382

A. No, I think it is nearer seven thousand.

Q. You do your field work in how many months?

A. From April to the first of October. From April 1st to October, allowing a month for vacation.

Q. A month?

A. Yes, of twenty-five working days.

Q. If the vacation is not broken into at midnight.

A. Unfortunately it was in this case.

Q. Then you cover about 1,000 parcels a month?

A. Approximately, yes.

Q. Or more?

A. Or more, yes. 7383

Q. You cover really 7,000 in five months?

A. Nearly 7,000. I have not the exact number.

Q. In five months. You start in April and finish in October, taking out your vacation period.

A. Oh, taking out my vacation period, yes.

Q. What time do you turn in your tentative reports, the first of October?

A. The final tentative reports are presumed, I

7384 believe, this year, to be turned in around the 15th of September, so that we sort of have our books balanced in time.

Q. Your section to a large extent is improved?

A. Yes, sir.

Q. So that where you say 7,000 parcels, we might assume at least 5,000 of them are improved plots; at least 5,000?

A. More than that.

Q. And how far west do you go?

A. I start at 14th street and Fifth avenue and run north into 26th street; from the north side of
7385 26th street and Fifth avenue I run west to Sixth avenue; I run north up Sixth avenue up 40th street and come across from Sixth avenue and 40th street to the East River; then down to 14th street, then over to Fifth avenue.

Q. That is some job, isn't it?

Mr. Ransom: Do you claim he cannot do it?

Q. The buildings along Fifth avenue and Broadway, Madison avenue or Fourth avenue, are, many of them, large office buildings?

A. Yes, large office and loft buildings.

Q. Some of them fifteen or twenty story structures?

7386 A. Yes, sir.

Q. We will come down to 14th street. Do you recall the block on which the nineteen story office building is erected? Referring particularly to block 870, tell us the character of the property on the Third Avenue section of that block. That would be on the west side of Third avenue between 14th and 15th streets.

A. The character of those buildings, the hotel

building, the Central Hotel, and then comes the 7387
old Heidelburg building, which——

Q. You are talking now about two story structures?

A. Why, the Central Hotel is at 14th street, next to the northwest corner of 14th street and Third Avenue, and that is five stories. Then we come to two-stories, three stories, then four more five stories.

Q. How many saloons are there in that block front?

Mr. Ransom: Are or were?

Mr. O'Brien: Are.

A. About four. 7388

Q. And on the 14th street frontage building, you have just east of the corner building—which you call the Central Hotel?

A. That is the corner building, yes.

Q. You have a structure called Tammany Hall?

A. Yes, sir.

Q. And next to that the old Tony Pastor's Theatre?

A. I believe there was a building called that. It is now the Olympic. Is that what you are referring to?

Q. Well, there is a moving-picture house right there, east of Tammany Hall? 7389

A. The old Academy of Music?

Q. Then you have the Academy of Music?

A. Yes.

Q. That was a building erected many years ago. Does that go back before your time, Mr. Quinn?

A. That goes back before my time.

Q. The same structure?

A. The same structure practically.

7390 Q. That covers the entire corner of Irving Place and 14th street, northeast?

A. Northeast, yes.

Q. And it runs up to the Gas Company building?

A. Yes.

Q. Across the street on 15th street, from the office building, will you tell us the number of boarding houses there are there?

The Master: There is a theatre right opposite there, isn't there?

Mr. O'Brien: I meant to the north. There is the German Theatre that was.

7391 Mr. Ransom: That is on Irving place.

A. You refer to 15th street?

The Master: You are on 15th street?

Mr. O'Brien: 15th street.

The Master: Between Irving Place and Third avenue?

Mr. O'Brien: And Third avenue.

The Master: Suppose you give the character of the houses there, the structural character of the buildings.

The Witness: Three and four story buildings. The majority of them, I presume, are

7392 furnished room boarding houses.

Q. Boarding houses, did you say?

A. Well, rooming houses, I would say.

Q. You said boarding?

A. Boarding—I imagine so. They are furnished room houses, and I presume a few of them take boarders. That is the idea.

Q. Well, it has been that kind of a block for a long time?

A. It has been that way for some time. 7393

Q. Directly opposite the complainant's office building on Irving Place in the vacant German Theatre?

A. Yes, sir, there is the old theatre.

Q. It is not used now?

A. Amberg's old theatre.

Mr. Ransom: I think they are using it.

The Witness: I am not positive about its being used.

The Master: The important thing is that on Irving Place, leading up to Gramercy Square, they are beginning to put up big business 7394 structures, are they not?

The Witness: I have already noticed that.

The Master: There is the Kopp Brothers factory, the corset factory?

The Witness: Yes, sir, the Nemo corset factory.

The Master: And as you go further north towards Gramercy Square you run into a better class of residential buildings?

The Witness: Yes, sir.

The Master: And the Irving Place section from 17th or 18th Street to Gramercy Square is still the old type fashionable residential sec- 7395 tion?

The Witness: Yes, sir.

The Master: Judge Ingraham still lives there somewhere, doesn't he?

The Witness: I don't know.

Mr. O'Brien: Your Honor took a big jump, a rapid flight up to the Gramercy Park section.

7396 The Master: It is not a very big flight from 14th Street.

Mr. O'Brien: You are passing over Huyler's and the corset factories and other things.

The Master: I was not passing. I am simply indicating that on Irving Place, which is the test on this record, is what is on Irving Place not what is on Third Avenue, and that we are about 200 or 300 feet from Union Square, which is getting to be a tremendous section, and right on the artery of Fourth Avenue. We might as well get the record clear as to what
7397 is in that section. Don't waste any time on 14th Street and Third Avenue. It is an entirely different neighborhood.

By Mr. O'Brien:

Q. What is south of the German theatre on that side of Irving Place?

The Master: On the west side of Irving Place between 14th and 15th Streets?

A. The Automat restaurant comes in there with an L.

Q. There are some beaneries in between, aren't there?

A. There is a hotel there, if you want to call it
7398 such.

Q. Now, don't dignify those things by calling them hotels?

A. It is an old building with a liquor store on the ground floor.

Q. And in the block bounded by 14th Street and Fourth Avenue, and 15th Street and Irving Place, how many saloons are there?

A. Bounded by Irving Place and Union Square 7399
and 15th Street?

Q. Yes.

A. About six to my knowledge. Whether they are there to-day or not I don't know.

Q. Well, they were there——

A. In 1919.

Q. And on the south side of 14th Street between Fourth Avenue and Third Avenue you have how many more?

The Master: There are only one or two there.

Q. Well, you have three or four lunch rooms, and Lüchow's?
7400

A. Yes, sir.

Q. And three or four moving picture places?

A. Yes, sir, and three or four gent's furnishing places, and then the German Bank, the Central Bank they call it now.

By the Master:

Q. Mr. Quinn, am I correct in my understanding of it that the neighborhood changes very rapidly when you leave the corner of 14th Street and Irving Place going north and west?

A. When you leave the corner of 14th Street and Irving Place going north and west?

Q. Yes. 7401

A. You mean as far as——

Q. As far as the character of the structures is concerned?

A. Yes, the character of the structures going north.

By Mr. O'Brien:

Q. Do you mean west cross the park?

The Master: No, I mean west as far as Union Square.

7402 Q. Just describe the character of this block that has the German Theatre. It has six saloons on it?

A. That is on the 14th Street side of it.

The Master: What I think ought to be on this record for the information of the courts who may have occasions to review my findings is this: Not so much the character of 14th Street from Third Avenue to Fourth Avenue on the north and south sides, or the character of 15th Street between Irving Place and Third Avenue, or Third Avenue between 15th and 14th Streets, but the fact that Irving Place runs from 14th

7403 Street to 20th or 21st Street—which is it?

The Witness: Irving Place runs up to 20th Street.

By the Master:

Q. And it is one block west of Third Avenue, is that correct?

A. That is right.

Q. Now at 20th Street it meets Gramercy Park, is that correct?

A. Yes, sir.

Q. Gramercy Park runs from about at a point midway between Fourth and Lexington Avenues, and then midway between Irving Place and Third

7404 Avenue?

A. Yes, sir.

Q. At Gramercy Park there are some clubs and private apartments, are there not?

A. Yes, sir.

Q. Running up Irving Place as you go nearer to Gramercy Park, we have the Huyler candy factory?

A. Yes, sir.

Q. How big a building is that, about eight 7405
stories?

A. Eight or ten stories.

Mr. O'Brien: It has a couple of annexes.

The Witness: Yes, sir, eight and ten story.

Q. Then there is this corset factory. That is about twelve stories?

A. Yes, sir, about twelve stories.

Q. What other factories are there on Irving Place?

Mr. O'Brien: There is Borgfeld.

The Witness: That is twelve stories.

Q. Where is that? 7406

A. It is an eleven story building on the northwest corner of 16th Street and Irving Place.

Q. Are there any other big or substantial business buildings on Irving Place between Gramercy Park and 14th Street?

A. Well, you have mentioned the largest. The Washington Irving High School is there, but you are referring to business buildings.

By Mr. Ransom:

Q. How about the Review of Reviews Publishing Company Building. I don't know the name of the company?

A. That is a nine story building in the middle of 7407
the block—that is on 16th Street right near Irving Place.

The Master: Between Irving Place and Third Avenue?

The Witness: Between Union Square and Irving Place.

By Mr. O'Brien:

Q. There are a number of boarding houses on the

7408 east side of Irving Place from 18th to 14th Streets, are there not?

A. Small buildings.

Q. Boarding houses?

A. There are some three and a half story buildings there.

By the Master:

Q. Now, Mr. Quinn, west of Irving Place beginning at 14th Street you meet Union Square, do you not?

A. Yes, sir.

Q. And Union Square runs into Fourth Avenue at 17th or 18th Street, does it not?

7409

A. Yes, sir.

Q. At 14th Street you meet the easterly side of Union Square East?

A. Yes, sir.

Q. And you follow that straight up Fourth Avenue?

A. Yes, sir.

Q. Beginning at say 17th Street and Fourth Avenue all the way up to 23rd Street, or even up to 34th Street, what is the character of that avenue?

A. They are loft buildings.

Q. They are modern?

7410 A. Modern.

The Master: Old or modern?

The Witness: Modern.

Q. You would not call the Parker Building a new building?

A. No.

Q. That is at 19th Street and Fourth Avenue?

A. That is the exception.

Q. And the Florence Hotel? 7411

A. Yes.

The Master: Most of the buildings are between 17th and 34th Street and Park Avenue, or we will say 30th Street and Park Avenue?

The Witness: Yes.

The Master: Are the modern type of business building that have been built within the last ten or twelve years, ten, twelve and eighteen story buildings?

The Witness: Yes, ten, twelve, fifteen and eighteen story buildings, yes.

The Master: As high as twenty story buil l- 7412
ings?

The Witness: Yes.

The Master: On the corner of 17th Street and Union Square east at Fourth Avenue there is a very large business building, isn't there, where the silk houses are?

The Witness: Yes.

The Master: This whole section through there is known as the silk district now, isn't it?

Mr. O'Brien: If we are going into these glittering generalities, then I want to take the witness over this ground minutely. 7413

The Master: Yes, you will examine him.

Mr. O'Brien: I don't think it will serve any good purpose. You cannot call this the silk district. There is nothing silky in the territory south of 19th Street.

The Master: There isn't?

Mr. O'Brien: I don't think so.

7414 The Master: Well, you want to visit the building on the northwest corner.

Mr. O'Brien: Then the silk business has gone away clean up north.

The Master: You want to see the Eagle Building.

Mr. O'Brien: I know the Eagle Building at 22nd Street is a new building, but the silk trade goes up further north.

The Master: Take the building at 17th Street and Fourth Avenue, the northwest corner, right next door to where we used to be in the Building Department, the old Everett Hotel, and
7415 just satisfy yourself how many silk dealers there are in that building. I wanted the Court to have a general picture. On all of these side streets now east and west of Fourth Avenue, right along Fourth Avenue all the way up, are these lofts and office buildings, are there not, more or less?

The Witness: Oh, yes, and some of them——

Mr. O'Brien: I might say, while your Honor is right on this point, so that we will be historically correct, that it was just the growth in 15th, 16th, 17th and 18th streets between
7416 Fourth avenue and Sixth avenue, that led to the movement in favor of a zoning system, when they started to erect a lot of buildings that went up to such a great height that there wasn't any light for the lower floors, and there was a great wrecking of real estate values.

The Master: You may be correct about that.

Mr. O'Brien: That was the great trouble, that everyone sought to go up to the sky, and

the result was the lower floors could not be 7417
rented, and there was a wrecking of values, and the tax department was compelled when these applications were made, supported by the statements as to the falling values, to change the assessment, and as a result they passed this zoning law.

The Master: You are speaking of the conditions up on Fifth avenue, really?

Mr. O'Brien: Well, your Honor, with the sweat shops came the crowd, and that other incidental problem came too.

The Master: On Third avenue, running north 7418
from 14th street, has remained very much as it was for many years?

The Witness: Yes.

The Master: The old style buildings, stores in the ground floor, saloons, two or three to a block?

The Witness: Yes.

The Master: Two or three story, walk up flats, and tenements?

The Witness: On Third avenue, yes.

The Master: Yes.

The Witness: Old buildings.

The Master: On the side streets, running 7419
along 15th and 16th streets, for several blocks, are still these two and a half and three-story, high stoop brick or brown stone buildings, more or less, are there not?

The Witness: Yes, the general character of them.

The Master: And as you go nearer to Gramercy Park and further north, the character of

7420 them and the character of the people becomes better?

The Witness: Why, yes.

Mr. O'Brien: Of course, Gramercy Park is only one little square block, your Honor.

The Master: If I am wrong about it, the witness will correct me, but my understanding of it is, that on these side streets, 19th and 20th and so on, up, 21st and 22nd, they have made one and two room and bath apartments, where people are living in great numbers now, and very nice people, too, there.

7421 The Witness: That is my understanding of it.

Mr. O'Brien: That is only on the frontage of the Park, though. There hasn't been any improvement on Third avenue from 14th street north to 15th street.

The Master: I brought that out. On Third avenue, all the way north, has remained the same for many years.

Mr. O'Brien: Of course, that frontage on Gramercy Park, that one little half of a square block, there has been the Players Club and the National Art Club, and a few other

7422 things.

The Master: Third avenue, if anything, is getting poorer all the time; is that right?

The Witness: Yes.

The Master: Except as to some drug houses that have put some buildings up?

The Witness: Imer and Amend have just put up a new building.

The Master: But what I am trying to get

at, Mr. O'Brien, is this, to be perfectly clear 7423
with you and likewise to the court who may have to review this record, you have been bringing out very properly the condition of 11th Street and Third Avenue, and part of 15th Street. I know very well, as you do, both of us being raised there, just what those conditions are, but I wanted to spread on the record the proximity of this corner at 15th Street, not that I have at all made up my mind as to whether the witness' judgment of value is correct, nor have I any idea just what the development will be, but I wanted to get 7424
before the court a general picture of where these buildings were. You and I know it and picture it perfectly, because we have lived here all our lives, but the court with judges from all over the country don't know this section as you and I do.

Mr. O'Brien: What I wanted was the complete story. When you come to talk about these improved buildings or tenements or anything, it means sweat shops, and it meant the wrecking of real estate values, that rush hour growth that you spoke of.

The Master: You better ask the witness the 7425
question so as to get it on the record. You will do best to get it that way.

Mr. Ransom: Counsel wants to testify.

Q. The building at the southwest corner of 18th Street, the domicile of the Old Building Department, is still there?

A. The southwest corner of 18th Street and Fourth Avenue, yes, sir.

7426 Q. North from that there have been some large buildings erected, some of them twenty stories high, have there not?

A. Yes, sir.

Q. For example, the Eagle Building at 22nd Street and Fourth Avenue?

A. Yes, sir.

Q. And other buildings of similar character?

A. Yes.

Q. And into those buildings have come various manufacturers of shirt waists and various forms of dry goods?

7427 A. Yes, sir.

Q. With numerous employees?

A. Yes, sir.

Q. Are you acquainted with the conditions that obtained in the last seven years on Fifth Avenue between 14th Street and 23rd Street, at first, and later north of 23rd Street?

A. You mean relative to crowds congregating?

Q. Yes.

A. Yes, sir.

Q. The noon day crowds?

A. Yes.

7428 Q. They offered a great problem to the city fathers, you know that?

A. Yes, sir.

Q. And into the streets from the various buildings in the side streets, into the avenues, came the surging crowds of workers at the noon day hour?

A. Yes, sir.

Q. So the pedestrians have to walk in the street?

Mr. O'Brien: The answer was yes, I suppose.

Mr. Ransom: Are you testifying?

Mr. O'Brien: No, I assume—— 7429

The Witness: You asked me if I realized if such a thing was the fact.

Q. Yes.

A. Yes.

Mr. O'Brien: I refer at the moment to the printed volume of the proceedings of the Zoning Commission, which has in narrative form the testimony of a great many experts, a great many city officials——

The Master: I don't know where this is leading us to.

Mr. O'Brien: Well, it goes directly—— 7430

The Master: The fact is, as I understand it, and if I am not correct I wish Mr. Quinn would set me right, that the buildings on Fourth Avenue are not generally used for manufacturing purposes, but really for sales rooms and show rooms, and that very few of them have any manufacturing done on the premises. Am I right about that?

The Witness: There are some of them that have manufacturing done, but a great many of them have salesrooms and show rooms and even offices for out-of-town concerns.

The Master: Yes. The smaller percentage, 7431 I understood, manufacture on the premises. Is that correct?

The Witness: Yes.

Mr. O'Brien: Your Honor, I think the witness ought to be cautioned——

The Witness: I am not in a position to answer that. I don't want you to agree with me because I have a notion about it.

7432 Mr. O'Brien: May I finish my statement, for your own information, in regard to the proceedings of the zoning commission.

Mr. Ransom: I object to the statements of counsel. If you wish to take the stand——

The Master: The stenographer can't take both of you. Will you wait a minute, Mr. O'Brien. Now, Mr. Ransom, what is your objection?

Mr. Ransom: Counsel has made a long statement, which is in the nature of testimony, without offering himself for cross-examination.

7433 The Master: How can it be in the nature of testimony?

Mr. Ransom: He habitually fills the record with statements——

The Master: You don't suppose I am taking Mr. O'Brien's statements as testimony, do you, Mr. Ransom?

Mr. Ransom: I think it is a very objectionable thing to allow a continuous narrative of fact or allegations of fact on the part of counsel for defendant, to run through this record and far eclipse in quantity the volume of testimony which day by day is being taken.

7434 The Master: Mr. O'Brien, you said you wanted to make some reference?

Mr. O'Brien: I want to make reference to the volume of the Board of Estimate and Apportionment containing the proceedings of the Zoning Commission. This is for your own enlightment. Of course, I know the limitations of the rules of evidence, but for your own enlightment on the subject, we have been touch-

ing upon the proceedings contained in narra- 7435
tive form, all of the statements of experts, and the statement made by Lawson Purdy, formerly President of the Tax Board——

Mr. Ransom: I object to the statement of counsel. I think it is an unfair method of presenting the matter.

The Master: He has not told me what the statement is.

Mr. Ransom: If he has any questions he wishes to ask the witness, he should ask him, and if he has any document he wishes to offer in evidence, he should offer it, but I would 7436
like to have the taking of testimony go forward, and something aside from continuous addresses by one of the three defendants' counsel.

The Master: I won't look at the book, because I don't think——

Mr. O'Brien: Let me finish the statement, if your Honor please, just that sentence I was on.

The Master: Haven't you finished?

Mr. O'Brien: No, I was referring particularly to Lawson Purdy's sworn testimony on the question of real estate values as affected by the development of buildings in that particular 7437
neighborhood. I am not offering it in evidence, but you launched into that branch of the subject yourself, and for the benefit of the record I refer you to it.

The Master: I am not going to look at it. I don't think it is at all important. The Zoning Ordinance was put into effect several years ago, either for one purpose or another. It is

7438 not important which. All that I have tried to do is to give the Court reviewing my record as clear a picture as I could of the surrounding territory. It may well be that problems have arisen because of the old buildings there on Fifth avenue; it may be that those problems have not arisen at all on Fourth avenue. If you think that any such problems have arisen on Fourth avenue, I will let you bring it out from the witness, or I will do it myself.

Mr. O'Brien: I assume the real estate experts will be heard in this case.

7439 The Master: Mr. Quinn, Mr. O'Brien brought out from you the conditions that existed at the time the zoning ordinance went into effect on Fifth avenue. Have you ever noticed that condition on Fourth avenue?

The Witness: No, sir, not to the extent it existed on Fifth avenue.

The Master: Now, the next question.

Mr. Ransom: Or on Irving Place at all?

The Witness: No, sir, I have not to the extent——

Mr. Ransom: Or to any extent?

Mr. O'Brien: Do you want this continued,

7440 Judge? I am going to get that minutely on the record. There isn't going to be any scattered testimony in this case, if I know it, your Honor.

The Master: Go ahead, your next question.

Q. Do you know how many people are employed at Huyler's factory?

A. No, sir, I do not.

Q. It is located on the southeast corner of Irving 7441
Place and 16th Street, is it not?

A. 18th Street, I presume.

Q. 18th Street and Irving Place?

A. You said 16th Street.

Q. I beg your pardon.

A. 18th Street, yes, sir.

Q. Do you know how many people are employed in the Nemo Corset Factory?

A. No, sir.

Q. I suppose south of 14th Street is the deluge?

A. I beg your pardon.

Mr. Ransom: I object. The question is 7442
meaningless on the record.

Mr. O'Brien: Well, it cuts off a lot of testimony now.

The Master: It is an entirely different character of neighborhood.

The Witness: Absolutely.

Q. What unit of value did you use on 14th Street opposite Block 988, being the property of the Eagle Pencil Company?

A. That is outside of my jurisdiction.

The Master: South side of 14th Street is outside of your jurisdiction?

The Witness: Yes. 7443

Q. Doesn't your field book give you notes as to the units used on the bordering territory?

A. I haven't got them here. We have a land map, don't you understand, but it don't——

Q. Could you bring that and refresh your memory tomorrow?

A. I could look that over, yes, and see what units were used.

7444 Q. There isn't any question but what you took them into consideration, is there?

A. Everything is taken into consideration, yes, sir, but I cannot refresh my memory off hand because I haven't got the books with me.

Q. Would you bring them tomorrow, all of the territory that borders yours, so that we will be able to compare the units of value that were used?

A. Yes, sir, I will.

Q. Now on Lot No. 1, Block 988, does your field book note the number and character of the buildings?

7445 A. Yes, two and one story retort house, office building and coal house, that is my memorandum.

Q. Mr. Quinn, give us your unit of value on the north side of East 15th Street, west of Avenue C?

A. 8280 a front foot.

Q. And what was your unit on Block 982, Lot 13?

A. Block 982, Lot 13, on the south side of 15th Street?

The Master: Yes.

The Witness: 8280.

Q. How is that block there that borders on the west side of Avenue C, bounded on the south by 15th Street, on the north by 16th Street, occupied?

7446 A. Tenement houses, a biscuit and pie bakery.

Q. Laundries?

A. A stable, etc.

Q. The tenement houses are of the old type?

A. Yes, sir.

Q. The same you would say of the tenement houses that exist on Block 982, to the west of lot 13?

A. Block 982 to the west of lot 13, on 15th Street

is a carpet cleaning company, on the south side of 7447
15th Street. Then comes a stable and tenement houses.

Q. Of the old type?

A. And an iron works. Yes, of the old type.

Q. Tenement house of the so-called dumb-bell type?

A. Of the old type, yes, sir.

Q. The same you would say of the tenement houses that exist on 14th Street, the north side, just west of Lot 13?

A. Just west of Lot 13, those are five story, old style tenements.

7448

Q. The dumb-bell or railroad type?

A. Of the old railroad type, yes.

Q. And opposite Block 982—you will not have this in your records, because you say you have not got the book——

A. No, I have not got the book.

Q. But you will recall the tenement houses standing on and filling that block?

A. That is what they are, the five story tenement houses.

Q. The old type of tenement houses?

A. The old style, yes, sir.

Q. And I suppose you did not go into the rental 7449
value of that lot 13 so far as it is rented by the complainant to the Eagle Pencil Company?

A. No, sir; I did not.

Q. Or to the Cunningham Contracting Company or other persons or companies that have their trucks in the yard there?

A. No, sir; I did not.

Q. Did you make any deductions from the valu-

7450 ations that you placed on Block 988, Lot 1, and on Block 991, Lot 1, by reason of the fact that there existed to the north the Willard Parker Hospital for contageous diseases?

A. No, sir, I considered the land as a unit by itself.

Q. Irrespective of the uses to which the neighboring properties were put?

A. Yes, sir.

Q. Would you say the same of the properties that we were talking about a little while ago, on 22nd Street, where there were lumber yards and coal

7451 yards, to the north of Block 979?

A. On 979? Yes, sir; I figured that irrespective of what was there at present.

Q. Did you consider the rents received by the complainant company from Booth & Flinn for the use of Block 991, Lot 1, in determining your estimate of the value of the property as of October 1, 1919?

A. No, sir; I did not.

The Master: 1918.

Mr. O'Brien: 1918, yes.

The Witness: No, sir; I did not.

Q. Did you consider the damaging effect, if any,

7452 of having the work carried on there that they are conducting upon the neighboring property——

A. Will you kindly explain that, Mr. O'Brien?

Q. Did you consider the damaging effect, if any, upon the neighboring property of the complainant company by reason of the uses to which Block 991 was put——

The Master: By Booth & Flinn?

Mr. O'Brien: By Booth & Flinn, as of October 1, 1918?

Mr. Ransom: I object to the question on the ground that there is nothing in the record whatever to indicate that there is any damaging effect or any diminution in value. Some of the circumstances regarding the temporary occupancy of that property by Booth & Flinn already appear, but there is nothing which is in the record so far which indicates any possible damaging effect. 7453

The Master: Objection overruled and exception.

A. No, sir.

Q. Did you in considering what was the fair market value under ordinary circumstances of Block 988, Lot 1, and Block 989, Lot 1, consider the existence of a gas holder of the New Amsterdam Gas Company to the east of Lot 1 on Block 981? 7454

A. In fixing my land value there I just fixed upon the basis of the unit of value which I thought it was worth irrespective of what was on the east or what was on the west. That is as far as gas holders were concerned.

By the Master:

Q. But having in mind the general character of the neighborhood?

A. Yes, sir. 7455

Q. And its accessibility?

A. Yes, sir.

Q. And the use to which property generally is put in that neighborhood?

A. Yes, sir.

Q. And that is so with reference to all of the property that you have appraised, is it? Is that so with reference to all of the property that you ap-

7456 praised, that you had in mind the surrounding territory, the character of the surrounding property?

A. Yes, sir.

Q. And its accessibility?

A. Yes, sir.

Q. And the purposes for which it was used?

A. Yes, sir.

Q. And generally the elements that go to the value of vacant land, unimproved?

A. Yes, sir.

Q. In those sections to which you have referred?

7457 A. Yes.

By Mr. O'Brien:

Q. But you did not consider the fact that there was a gas holder in a separate ownership to the east of Block 989 that might stay there if Block 989 were sold to somebody else?

A. No, I did not consider that.

Q. You do not recall, Mr. Quinn, the facts upon which you predicated your valuation of that line of the marginal street on the river front?

The Master: At Lot 57?

Mr. O'Brien: Yes, do you recall the particular elements that entered into that?

7458 A. Why, no. Lot 47, I guess you are referring to.

Q. Yes.

A. I figured it at $250 a linear foot.

The Master: You do not remember the elements that entered into your calculations?

The Witness: No, sir.

The Master: My recollection is that you said it was an arbitrary figure that you thought it was worth.

The Witness: Yes, sir.

By Mr. O'Brien:

Q. And what you have said about not considering the element of expense entailed in removing useless buildings would apply to Blocks 982, 988 and 989, as to the other blocks concerning which you have testified to-day?

A. Relative to the land value?

Q. Yes.

A. Yes, sir.

Q. This plot, Lot No. 7, Block 985 on 17th Street, hasn't any frontage on either of the avenues, has it?

A. No, sir.

Q. It has no accessibility so far as immediate connection or contact is concerned with those avenues?

A. No, sir.

Q. You have assessed entirely as inside lots?

A. Yes, sir.

Q. And have you adopted the same unit of value that you did for the properties immediately to the west and immediately to the east within the same block, 985?

A. Yes, sir.

Q. Except as to the corners and the plottages on the avenues?

A. Yes, sir.

Q. How did your units of value for the inside lots on East 18th Street and East 17th Street compare with the units of value which you adopted on Avenue B and Avenue C?

A. I have treated this parcel as interior, taking twelve lots on 17th Street and twelve lots on 18th Street, twelve lots on 18th Street at $7,000 a lot,

7462 and twelve lots on 17th Street at $6,500 a lot, and adding ten per cent. for plottage.

Q. Oh, you added ten per cent. here, too?

A. Yes, sir.

Q. For plottage?

A. For plottage.

Q. When you added that plottage did you consider the fact that there were a couple of holders on here that were not being used?

Mr. Ransom: I object to the form of the question as assuming a state of facts not proven, and the witness is not competent to

7463 testify on the question as to whether they are or are not used.

Mr. O'Brien: It is in the evidence.

The Master: I will let the witness answer whether in fixing a value on the property unimproved he had in mind what was on it.

The Witness: No, sir, I assessed the land as if it was vacant.

Q. Is it all tenement houses on East 18th Street between Lot 7 and Avenue B?

A. On Lot 6 there is a mattress factory, and on Lots 1, 2, 3, 4 and 5 there are tenements, with stores.

7464 Q. Old time tenements with stores on the ground floor?

A. Stores on the ground floor.

Q. On the 17th Street side, between lot 7 and the corner of Avenue B what is there?

A. That would be tenement houses.

Q. Of the old type?

A. Of the old type.

Q. Five stories high?

A. Five stories high. 7465

Q. Six apartments to a floor, or eight?

A. Four, I believe.

Q. The kind that used to have the water closet accommodations in the back yard?

A. That is what they used to be years ago, yes, sir.

Q. Now, that may be said of all the tenement house property that you have described to-day?

Mr. Ransom: Oh, no, not all of it.

A. Oh, no, on some of it they have them in the halls——

Q. Yes, they all have to have them in the halls, or in brick in the yards? 7466

A. The majority of them are the old type tenement houses.

Q. That existed in the days of Jacob Riis. Now, just north of Block 985, Lot 7, on East 18th Street, what is the general character of the improvements? I am using the word "improvements" with quotation marks. That is, from Avenue B to Avenue C. Just read off your notes there?

A. Sheds, old three-story buildings, a couple of lots vacant, old factory, and the rest are vacant.

Q. The same would be said of the property at the south side of 17th Street opposite Block 985, Lot 7? 7467

A. Between Avenue B and C?

Q. Yes.

A. Tenement houses, old style tenement houses.

Q. With all the equipment that I have already mentioned?

A. Yes, the old style tenement house.

Q. And with other variations between old laundries, shacks, sheds, etc.?

7468 A. Sheds, stables.

Q. Did you use the same unit of value on the south side of 17th Street and the north side of 18th Street opposite this plot of the company?

A. Yes, sir.

Q. The same unit?

A. The same unit.

Q. Without the plottage?

A. Without the plottage.

Q. Now, on that portion of Block 985 to the east, bordering on Avenue C, is that tenements also, or is it factories or sheds?

7469 A. On the north side of 17th Street towards Avenue C there are a couple of vacant lots, factory, cigar box factory. Now, do you want the avenue?

Q. Yes, get the avenue?

A. Tenement houses.

The Master: On Avenue C, between 17th and 18th Streets?

The Witness: Yes, sir.

The Master: West side?

The Witness: Yes, sir.

Q. So far as you have gone in your examination you have not included anything more than ten per

7470 cent for plottage, have you?

A. I think I have explained each individual parcel, but I don't think there is more than ten per cent.

Q. On the east side of Avenue C between 17th and 18th Streets, what is the general character of the buildings?

A. That is a public park.

The Master: What park is that, Mr. Quinn? What do they call it, do you remember?

A. I don't remember the name of it; I know it 7471
is a public park.

Q. Do you know when that was acquired by the city?

A. No, sir, I do not.

Q. Then you did not refer to the prices paid by the city in condemnation proceedings?

A. For the park?

Q. Yes.

A. No, sir, I did not.

Q. In arriving at your valuations?

A. No, sir.

Q. Just opposite the park on the south side of 7472
East 17th street, what is there?

A. The street cleaning department.

Q. They occupy the whole block?

A. No, sir, they occupy lot 1. The Willard Parker Hospital adjoins it.

The Master: Right over to the river. The Willard Parker Hospital runs from the street cleaning department line over to the river?

The Witness: Yes, sir.

Q. The street cleaning department have all of their street cleaning equipment stored there?

A. They have various trucks and things; I do 7473
not know the details of it.

Q. It is not used for any other purpose?

A. Not to my knowledge.

Q. Do you recall any sales in the last ten years, Mr. Quinn, in this section?

The Master: You mean on 17th and 18th streets and Avenue C?

Q. Say east of First avenue.

A. There may be some, but I don't recall them.

7474 Q. You don't recall any?

A. No, I don't; I would have to get a list of them.

Q. Your field books do not bear the account of sales, do they?

A. The field books——

Q. The one that you have before you?

A. It would have what has happened in the last year, if you are referring to what has transpired, but before that it would not have.

Q. On the west side of Avenue B, and from 17th to 18th street we have what kind of buildings?

A. Those are tenement houses.

7475 Q. You are reading now from the notes, or just refreshing your memory?

A. I am refreshing my memory from my field book, in conjunction with the map. You asked for the east side of Avenue B between 17th and 18th streets?

Q. No, I said the west side.

A. West side of Avenue B, between 17th and 18th streets—that is a plumbing factory, a machine shop and garage.

Q. You don't have any details as to that?

A. The Wells & Newton Plumbing Company, and next to that is a garage.

7476 Q. The plumbing factory is on the south?

A. No, it is on the north of 17th street.

Q. And just north of the plumbing factory is what?

A. Garage.

Q. One garage or many?

A. One.

Q. On the south of that, on Avenue B, what is the general nature of the structures, if any?

The Master: Between 16th and 17th street?

A. Tenement houses. 7477

Q. Of the old type?

A. Of the old type.

Q. And from 18th to 19th on Avenue B, is tenement house property too.

A. From 18th to 19th on the west side of Avenue B is—well, on the southwest corner of 19th street and Avenue B is the Dairy Company.

Q. Do they store their wagons there?

A. No, they have a regular dairy building, and have, I believe, a pasteurizing plant.

Q. With the usual rattle of cans?

A. A dairy company. 7478

Q. Do they occupy the whole of the block?

A. They occupy half of the block.

Q. South of that what have you?

A. South of that is the Miller & Daybill Company, second hand material.

Q. Second hand building material?

A. Building material.

Q. They occupy a good half of the block, do they not, with the storage of this material?

A. Miller Daybill, yes.

The Master: So he testified.

Mr. O'Brien: I was not speaking of the block front, but the block. 7479

The Master: No, the block front.

The Witness: The block front.

The Master: On Avenue B?

The Witness: On Avenue B.

The Master: Between 18th and 19th streets?

The Witness: That is it, on the northwest corner.

7480 Q. On the east side of Avenue B, what have you got?

A. On the east side of Avenue B between 18th and 19th Streets is the entire block front. That is building material.

The Master: Second-hand building material?

The Witness: Yes.

Q. It is stored up there to what height, if you recall?

A. Well, I do not recall, but it must be about or approximately 25 feet.

Q. Tenement houses on the south side of the
7481 street, looking out on this——

A. This is on the east side of Avenue B?

Q. Yes.

A. Right opposite the dairy proposition and opposite those other places. On the side streets are sheds and factories and some vacant land.

The Master: I shall rule now, Mr. O'Brien, that you have very thoroughly covered that neighborhood and indicated its character. I will not allow any more questions on that.

Mr. O'Brien: I would like to have the witness recalled, your Honor.

The Master: No.

Mr. O'Brien: I would like to reserve the
7482 right to go into this further.

The Master: You will have to subpœna him if you want to bring him back. The witness has stated to the Master that his public duties are such that unless he is excused now he will be in difficulty in making his annual report for tax purposes. He has also stated to the Master that Mr. Cantor, the President of the

Tax Board, has complained of the length of 7483
time that the witness has attended here. I think it is only fair to the witness that if he is called back again it be on the subpœna of the Corporation Counsel.

Mr. O'Brien: Your Honor, then, I assume is moved by the situation that is presented by President Cantor of the Tax Board—public duties?

The Master: I am moved in the first instance by my ruling which has been consistent throughout, that when the witness has been examined fully and completely and Mr. 7484
O'Brien and other counsel have no more questions to ask, the cross-examination is finished. I still adhere to my ruling that if Mr. O'Brien at any time wants a witness to come back for further cross, I will permit it to be done. In this particular instance I will not even ask counsel for the complainant to produce the witness, but in order to protect the witness will ask Mr. O'Brien to subpœna him, so that the witness will be protected against complaint by the head of his department.

Mr. O'Brien: Your Honor will recall that he was brought in here right in the midst of his 7485
summer vacation and right in the midst of the tax work in the department, where his testimony could be deferred to another time.

Mr. Ransom: May I say another word now?

The Master: No.

Mr. Ransom: I insist on my right to reply.

Mr. O'Brien: Just a minute, Judge Ransom. I will finish my statement and then you can

7486 talk *ad lib* so far as I am concerned and so long as it is not evidence.

Mr. Ransom: I do not do that.

Mr. O'Brien: I will state to your Honor that it is my desire to proceed further with the examination of the witness as to sales that have taken place in this neighborhood, as to the trend of depreciation in values in this neighborhood, as to the occupancy and use and general character of the sections immediately to the north and west, and along various other lines. That is the purpose.

7487 The Master: Proceed.

Mr. O'Brien: These matters I do not want to do unreasonably, but your Honor rules, basing his ruling as I understand it on the situation created by the Tax Department's message through the witness——

The Master: Proceed with your cross-examination, Mr. O'Brien.

Mr. Ransom: May I just say a word on that? So far as the complainant is concerned, the complainant requested the Corporation Counsel to produce Deputy Tax Commissioners in court. They are under the control of the City.

7488 Mr. O'Brien: When?

Mr. Ransom: The other day or last week?

Mr. O'Brien: What day? Let us be specific. Now you are going to make statements on the record, so let us be specific.

Mr. Ransom: I should say it was Wednesday or Thursday.

Mr. O'Brien: At the close of the hearings?

Mr. Ransom: Perhaps Tuesday. 7489

Mr. O'Brien: Jocosely.

Mr. Ransom: Not jocosely at all.

Mr. O'Brien: Conversation in the corridor.

Mr. Ransom: In the second place, so far as this witness is concerned, it is true that he was brought here to testify, not during the time when he was in the discharge of his official duties, but in vacation time. It is unfortunately true, and very surprisingly true, a matter of great surprise to the complainant, that this witness, as other witnesses, have been kept here day after day, for protracted 7490 cross-examination in challenge of their official work, by the representatives of the corporation counsel of the city of New York. The complainant has no reason to anticipate that either the corporation counsel or the Attorney General would subject this, or any other witness to so severe and so searching an attack upon the work which he did, his qualifications for the work, his manner of doing it, or the results of the discharge of his official duties.

The Master: Why should you be surprised at a thorough cross-examination? 7491

Mr. Ransom: That is all. You would not expect that.

The Master: Why not?

Mr. Ransom: From the representative of the corporation counsel.

The Master: That is what Mr. O'Brien is here for.

7492 Mr. Ransom: Well, I have made my statement.

The Master: Now go ahead with your cross-examination, Mr. O'Brien.

Mr. O'Brien: I want to say, your Honor, and for this record it would be more fitting for counsel today to take up the time of the Court with an apology for the manner in which he and his colleagues were dragged into Court in their vacation time.

The Master: I have heard enough of that. Go on with the cross-examination.

7493 Mr. O'Brien: That would be becoming.

The Master: Go on with the cross-examination.

Q. Mr. Quinn, you have not brought with you any memorandum of sales as to the neighborhood of 17th street, 18th street, Avennes A, C and B and First Avenue?

The Master: You need not answer that. The witness is directed not to answer on the ground that it has already been covered.

Mr. O'Brien: That is not covered as to these particular ones, if your Honor please.

The Master: Yes, I rule that it has been.

7494 Q. Or to the territory immediately to the north, Mr. Quinn?

The Master: The witness is directed not to answer.

Mr. O'Brien: This is going to save me asking him a number of questions as to sales of a more specific kind.

The Master: I am going to adhere to my ruling. The witness has stated he has not in Court

any memorandum showing sales made throughout this territory, that he has not collected them or brought them here. 7495

Q. You are not prepared, Mr. Quinn, at this time, to go into the trend of sales here in the last ten or fifteen years?

A. No, sir, I am not.

Q. Was this territory that you have testified to to-day—I mean now, all of the parcels of the company's property assessed by you to-day—ever brought under your jurisdiction in the tax department prior to the time that you were assigned to this district a year ago? 7496

A. No, sir.

Q. From 22nd north to 23rd, if you will refer to blocks 953 and 979, tell me briefly the character of the buildings?

The Master: Haven't you already done that, Mr. Quinn?

The Witness: I have.

Mr. O'Brien: 22nd to 23rd street, north.

The Master: On what avenue?

Mr. O'Brien: That will be from First Avenue to the river.

The Master: From what street north? From 23rd street north? 7497

Mr. O'Brien: From 22nd street north and First avenue to the river.

The Master: I will let him run for a block or two. That is all. Generally for a block or two north of 22nd street from First avenue to the river, what is the general character of the neighborhood?

The Witness: Tenement houses.

7498 The Master: Is it very much of the same character of neighborhood that you have been describing south of 22nd street?

The Witness: It is, yes, sir.

The Master: The whole section is the same around there?

The Witness: The same thing.

Q. It is interspersed with stables, shops and garages?

A. It is, yes, sir.

The Master: Stables, shops and old buildings of various kinds.

7499 Mr. O'Brien: Your Honor, I will suspend here, reserving the right to call the witness later for cross-examination in the event that something develops.

Mr. Chambers: I would like to make the same reservation.

The Master: There cannot be any reservations. The cross-examination will be ended.

Mr. O'Brien: With the proviso that you have already made, your Honor.

The Master: What I have already said appears upon the record. I will not put the burden upon the complainant of producing

7500 this witness again.

Mr. O'Brien: When he is produced it will be cross-examination of the complainant's witness?

The Master: Yes.

Mr. Chambers: When we bring him we will cross-examine him.

The Master: Yes. That is, of course, so far as it is proper cross-examination.

Mr. O'Brien: Well, I had in mind, your 7501
Honor, as we examined some of the other deputies some questions may arise that may make it necessary.

The Master: You may subpœna him if the occasion arises.

CROSS-EXAMINATION BY MR. CLARK:

Q. Mr. Quinn, Block 988, Lot 1, what did you allow for plottage on that?

The Master: He has answered all those questions, Mr. Clark. He won't go into it again. Mr. Chambers went over it very thoroughly. In most instances where plotting was 7502
allowed he testified about that himself.

Q. You testified that you allowed about ten per cent on that plot?

The Master: Did he so testify?

Mr. Clark: That is my recollection of it, yes.

The Master: Is that correct, Mr. Quinn?

The Witness: Approximately ten per cent; yes, sir.

Q. And the same on Block 989, Lot 1?

The Master: You need not answer that. Have you a point to make, Mr. Clark, about this? 7503

Mr. Clark: Yes, the point is this——

The Master: Then ask the question.

Mr. Clark: He has allowed plottage of ten per cent on Lot 1 of Block 988 and the same amount on Lot 1 of Block 989, and the latter lot is less than half the size of the first lot. I want him to explain the difference.

The Master: I will let you put it. Will you

7504 explain why it is that on Block 988 you figure ten per cent for plottage, and on Block 989 you figure ten per cent for plottage, and 988 was nearly double the size of 989, or more than double?

The Witness: For the simple reason that in my judgment a plot of the size of 989, 206 feet 6 inches front by 235 feet, understand, was worth ten per cent more by reason of the fact that it could be more advantageously improved, if necessary. Now, in plots it is customary in plots of say 100 feet by 100 feet, four full lots,
7505 see, of adding ten per cent, and that goes on, understand, and it all depends on the location and the desirability of the land, in my judgment.

The Master: In other words, you do not add any more for plottage because there is a greater amount of lots in that particular section?

The Witness: No.

The Master: And if that particular quality of lots had been collected on Fifth Avenue or Broadway, the plottage value would be more?

The Witness: Would be more.

7506 Q. But in the same neighborhood, if you had two plots of four lots each, wouldn't there be any additional value in connecting those two plots in one plot?

The Master: Would there be more value per plottage, for eight lots than there would be for four lots?

The Witness: I would charge ten per cent on the same unit of value, presuming they were the same unit of value.

Q. Isn't there in your judgment any value to having a larger plottage than four lots together? 7507

A. Why, yes, there is, that is the reason why I am charging ten per cent plottage on it.

Q. But you charge the same plottage on four lots as on eight lots?

A. It all depends on its location, I say.

Q. If you take Lot 1 on Block 989?

A. Yes.

Q. You charge ten per cent plottage on that?

A. Yes, sir.

Q. Now, assuming that the Consolidated Gas Company should buy that next lot which is owned by the New Amsterdam? 7508

A. Yes.

Q. And should throw that into one plot?

A. Yes.

Q. Wouldn't there be, in your judgment, any greater value to that plot than there would be to the two plots separately?

A. Absolutely none. I would put them both together and figure them on the units on the street and add on ten per cent of the entire proposition.

Q. So that as between a plot 100 by 100, and an entire block, there is no difference, in the same neighborhood, in your opinion, between the plottage that should be allowed? 7509

A. I say it all depends entirely on the location and value of the property, as the Master has said, if it was on Fifth Avenue——

The Master: Major Clark has limited his question to the same neighborhood.

The Witness: Oh, in the same neighborhood. No, I would use the same percentage.

7510 REDIRECT-EXAMINATION BY MR. RANSOM:

Q. Mr. Quinn, this field book which you have in court, is that one which was started by you, or one which was turned over to you by your predecessor?

A. This is one that was made up and contains the 1918 and 1919 values.

The Master: The 1918 assessment was made up by your predecessor?

The Witness: Yes, sir.

The Master: So it is a book started by a predecessor; that is the answer, isn't it?

The Witness: Yes, sir.

7511 Q. That is not one which contains the entries prior to 1918?

A. No, sir.

Q. Was there turned over to you any prior field book?

A. Yes, sir.

Q. Is the same thing true as to the field maps, that there was turned over to you the field map kept by your predecessor?

A. This is the same field map that was kept by my predecessor.

Q. Do you or the Tax Department keep in your 7512 office any list or index of sales and leases and rentals in the district which you covered?

Mr. O'Brien: I object to that as incompetent, irrelevant and immaterial.

The Master: I sustain the objection.

Mr. Ransom: I think he is entitled to show that, in view of the nature——

The Master: I will let you ask him whether he has access to any such records, and where they are.

Mr. Ransom: The question is whether 7513
there is.

The Master: All right, ask him that.

Q. Have you access to any index or file kept by you or by the Tax Department, showing the sales, leases, mortgages, rentals and the like?

Mr. O'Brien: Your Honor, in the last hour of my examination of the witness, I had to meet the attitude and the statements made by you with regard to finishing up with the witness, and I placed limitations on my own examination. The question now of going into this matter of sales, carefully as he would with the real 7514
estate expert, is being opened up, and I will have to state, no matter how much inconvenience it may be to all concerned, that I will have to go into this thoroughly, if it is opened up there now.

The Master: We are willing, and we will stay here until midnight if necessary. Answer the question, Mr. Quinn, if you have access to any records showing sales, leases, mortgages, rentals and the like.

The Witness: Yes, sir.

The Master: And where are those records to which you have access? 7515

The Witness: We are furnished with a copy of *The Record and Guide*, which contains the sales of leases, understand, in the district.

Q. Do you have any office record aside from that?

A. There is a file, I believe, kept in the office, a sort of an index file.

7516 Q. And do you use *The Record and Guide* and this index file?

A. Yes, sir.

Q. Do you have any——

Mr. O'Brien: I record this objection as to all of these questions.

The Master: Yes.

Mr. O'Brien: Noting an exception to each one of your rulings?

Q. Do you have any list of real estate agents in your district——

Mr. O'Brien: Now we are getting into the
7517 realm of hearsay.

The Master: I think you are right about it. Let him ask the question and I will rule on it.

Q. Do you have any list of real estate agents in your district of whom you make inquiries regarding rentals, sales, asking prices, bidding prices, and the like, on real property?

Mr. O'Brien: I object to it.

The Master: I sustain the objection. I don't care whether he has a list or not.

Q. Well, do you inquire of real estate agents in your district regarding leases, rentals, mortgages, sales, bidding and asking prices and the like?

7518 Mr. O'Brien: I object to that.

The Master: I sustain the objection.

Mr. Ransom: Exception.

The Master: I allowed Mr. Mulhall, I think it was, the other day, to testify in answer to a particular form of question put by Mr. O'Brien as to where he got his information, that he got it from a real estate broker, but I won't permit you to ask, as a direct question, whether he does talk with real estate men.

Q. Well, do you from time to time communicate 7519
with real estate agents in your district——

Mr. O'Brien: Same objection.

Q. (Continuing)—with respect to sales, mortgages, leases, and the like?

Mr. O'Brien: Same objection.

The Master: I sustain the objection.

Mr. Ransom: Exception.

The Master: I will permit Mr. Ransom to ask whether this witness in any form familiarized himself with sales, mortgages and leases, and I will let you cross-examine and find out in what form he does.

7520

Mr. O'Brien: Here is the danger, and the difficulty, the witness has already stated that he has not come prepared to testify on those matters.

The Master: No.

Mr. O'Brien: And you did not care to have me repeat questions or go into that ground a second time, and even if we get it it is all built on sand, you know, it is all hearsay.

The Master: I know it is, but I am going to permit the witness, if Judge Ransom wants it, to answer that question, whether he did familiarize himself.

7521

Mr. O'Brien: If we had a real estate expert, so-called, on the stand, and that was asked, it would be considered quite absurd.

Mr. Ransom: It would be absolutely admissible, even though it was hearsay.

The Master: Did you make any inquiries from, or did any one from any source as to

7522 sales, leases, mortgages and so on, in your territory?

The Witness: Yes, sir.

Q. Just describe what you did in that respect?

Mr. O'Brien: Your Honor, here is the situation you are going to have confronting us——

The Master: I won't allow it.

Mr. O'Brien: You are up a blind alley. The witness says he can't give you the sales.

The Master: I won't allow the question.

Mr. Ransom: Exception.

Q. From what sources did you make inquiry to
7523 familiarize yourself with the values?

Mr. O'Brien: Same objection.

The Master: I won't allow that either. He has said—oh, I will allow it. Go on and state it.

Mr. O'Brien: Your Honor, this only leads me to make this observation, which I made in another form before.

The Master: I know, don't make it.

Mr. O'Brien: That is, that the proper witness here is a tax commissioner or the whole board or some of the board who make these valuations, because the witness and his colleagues
7524 are only some of the sources of information that they have when they fix the valuation.

The Master: Where did you get your information from, Mr. Quinn? The objection is overruled, and an exception to Mr. O'Brien. Where did you get your information from as to sales, leases, mortgages and the like?

The Witness: From the records, as I say, from the files and the *Record and Guide*, and from interviews with real estate men.

Q. Did you make any use of the Register's office 7525
records with respect to leases and the like?

Mr. O'Brien: Same objection.

The Master: I will allow it.

Mr. O'Brien: Exception.

The Witness: The Register's office, the *Record and Guide* is a copy of the Register's office.

Q. You used the *Record and Guide* in that matter?

A. Yes, sir.

Q. And when you went on this district, did your predecessor turn over to you the memorandum which he had regarding sales and the like in the 7526
district?

A. Yes, sir.

The Master: I can't take that. How does he know whether his predecessor did.

Q. Did he turn over to you memorandum regarding copies in the district and regarding sales?

The Master: You mean other than the field book?

Mr. Ransom: Other than the field book.

The Master: I won't allow that question. They are not official documents.

Mr. Ransom: Exception. I don't see why any other form of files or papers or memoran- 7527
dum which may be kept by those men in their desks in connection with their field books and their field maps, are not a part of the data which they had.

The Master: I think it is going too far, and I will stand by my ruling. You may proceed, Mr. O'Brien, and I give you notice now that I am going to give you the widest latitude for

7528 cross examination, and I will stay here until that cross examination is finished to-night, even though it takes until midnight; not because I want to stay, and not because I want to make it burdensome on counsel, but I want to get finished with this witness.

Mr. O'Brien: I don't catch the import of your statement.

The Master: The import is that I am going to go ahead to-night, in view of the questions I have permitted Judge Ransom to ask, to the point that you have the fullest opportunity
7529 for cross-examination on those points, even though it takes all night, if necessary.

Mr. O'Brien: Well, I am on record on this question of all night, and even in the daytime, your Honor, I have objected to these vacation sessions for the trial of this case.

Q. Before making up your valuations for 1917, did you take into account the information turned over to you by your predecessor?

The Master: You need not answer that. That has already been covered.

Mr. Ransom: I don't think it has.

The Master: I think it has, and I won't per-
7530 mit any further questions on the subject.

Q. In making your 1919 valuations, at the end of September, 1918, and in swearing to them before a Justice of the Supreme Court on or before October 1, 1918, did you take into the account the data shown in the field book and field map turned over to you by your predecessor?

Mr. O'Brien: I object to it as incompetent, irrelevant and immaterial.

Mr. Ransom: I think we are very clearly 7531
entitled to have that answer.

The Master: Are those field books in court?

Mr. Chambers: I object on the ground the field maps are not here.

The Master: Are those here?

Mr. Ransom: Part of them are.

The Master: That his predecessor gave him?

Mr. Ransom: Yes.

The Master: Is your question inclusive of what is here in court and what is not in court?

Mr. Ransom: Both.

The Master: I will not permit it.

Mr. Ransom: Exception. 7532

Q. Have you taken into account the data contained in the field map circular which is here in court?

A. Yes, sir.

Mr. Chambers: I object to that on the ground that the field map is the best evidence.

Mr. O'Brien: I want to say right here that you can see here the mind, the horizon, the attitude of one that has been brought up in the Public Service Commission. They get the idea that as soon as a paper, no matter where it comes from, or how authoritative it may 7533
be, or how correct it is, or how reliable, as soon as it rests on the shelves of the P. S. C. for a while, it acquires a certain sanctity. That is the fundamental error in Judge Ransom's position.

Q. In making your 1919 assessment did you take into account the data and information shown in the book which you have identified here as con-

7534 taining your field map as turned over to you by your predecessor?

Mr. O'Brien: I make the same objection.

The Master: Same ruling. You can answer that.

A. Yes, sir.

Q. Did you also take into account the data and information contained in this field book to which you have made reference?

Mr. O'Brien: I make the same objection. Neither of them has been marked in evidence, and neither has been marked for identification.

7535

Mr. Ransom: Let me finish the question.

The Master: Wait, Mr. O'Brien, until he finishes his question.

Q. Did you take into account the data and information contained in this field book which has been referred to by you from time to time during the cross-examination, and which has been identified by you as containing 1918 data made up by your predecessor?

The Master: I am going to overrule that objection, and I am going to call the attention of counsel for the defendant to this fact,

7536 that the more Judge Ransom brings out by this witness that his judgment was formed upon information given to him by his predecessor, or statements made by his predecessor, to that extent he is weakening his own witness, if it is a question as to the weight that is to be given to the evidence. Why not let it go in?

Mr. Chambers: May I object on the ground

that I was not allowed even to look at the 7537
field book because I was informed that it was confidential. Now he is asking questions about it which would entitle us to have it and examine it.

The Master: I am going to allow this witness to state that in fixing his figures for 1919 he considered the memoranda in the various field books and field maps handed to him by his predecessor which are here in court. Did you consider these statements made by your predecessor, and the figures made by him for the prior year in reaching your conclusion for 7538
1919?

Mr. O'Brien: I want to say that the objections made are illuminated by what I had to say when the witnesses were first called——

The Master: I won't have any more, Mr. O'Brien.

Mr. O'Brien: Your Honor will recall——

The Master: I overrule the objection.

Mr. O'Brien: This is something I would like to call to your attention.

The Master: I won't have it. I overrule the objection.

Mr. O'Brien: I have objected to the ques- 7539
tion.

The Master: The objection is overruled, and I have stated my own question. Am I correct, Mr. Quinn?

The Witness: I might state that I used my own judgment in making the assessment for 1919, but I considered all the facts that were in the field book, and analyzed them to the

7540 best of my ability, and therefore with my own judgment made the assessment for 1919.

The Master: Any more questions?

By Mr. O'Brien:

Q. Mr. Quinn, you are not prepared to go into the question of sales that may have influenced your judgment as to the value of this property on October 1, 1918?

The Master: He has already said that, hasn't he? Well, say it again. Are you prepared now to give us all the figures of sales and leases and mortgages for the last one or

7541 two or five or ten years?

The Witness: No, sir.

Q. If I were to proceed with the cross-examination as to the different sections of territory covered by the whole scope of your examination today you would be unable to refer to specific sales as justifying your values?

A. Yes, sir.

The Master: You need not make a record for justifying a further cross-examination, Mr. O'Brien, if you want it. You need not worry about that.

Mr. O'Brien: The point is this, I don't want

7542 to take up a lot of time in asking questions——

The Master: I get your point. That is why I say you need not be at all concerned about my granting your application at any time if you want to bring this witness back and ask him certain questions on cross-examination, because he was unable to give you the information you wanted to-day. If in two or three or four weeks you find that you want to recall

Mr. Quinn for further cross-examination, and 7543
you serve a subpœna on him, either an ordinary subpœna or a subpœna *duces tecum* to produce his records and figures, on which he can give you the information you want, and he is in court, I will grant that application.

Q. The files that you referred to in answer to a question of Judge Ransom as being kept in the office are records of sales taken from the *Record and Guide*, are they not?

A. Yes, sir.

Q. Do they include anything else?

A. Not to my knowledge.

7544

Q. Who keeps that file?

A. I can't exactly tell you the name of the custodian of the file; I know it is kept there.

Q. Is it Mr. Sprague?

A. No, sir, not to my knowledge.

Q. Some clerk there is the custodian of it?

A. There is some employee of the department who is custodian of it; I don't know exactly who it is.

Q. The *Record and Guide* to which you have referred is a weekly paper published by a private individual or a company, is it not?

A. Yes, sir.

7545

Q. It is not the official organ of any city, state or federal department?

A. No, sir.

Q. The considerations that are set forth in the *Record and Guide* are frequently found to be erroneous and not a correct statement of the actual considerations?

7546 A. Not frequently. There may be some errors in the *Record and Guide*.

Q. Well, as a matter of fact, Mr. Quinn, so far as deeds to property are concerned in actual practice, isn't there less than one per cent in which the consideration is not expressed?

A. I am unable to answer that question as far as percentage is concerned.

Q. Roughly what would you say about it?

A. In the majority of cases they have nominal values.

Q. Nominal considerations?

7547 A. Yes, sir.

The Master: And the *Record and Guide* shows how much stamps has been put on, is that the idea?

The Witness: Yes, sir.

The Master: I mean by that revenue stamps?

The Witness: Yes, sir.

The Master: There have been instances where more revenue stamps were put on than the consideration justified, in order to mislead subsequent purchasers. Have you known of such instances?

The Witness: I have heard of them. They

7548 say it is for business purposes.

Q. Mr. Quinn, you may have testified before, but I would like it again, the name of your predecessor in this district?

A. Mr. Henry Bayer.

Q. Is he in court?

A. No, sir.

Q. Has he been subpœnaed by the complainant company?

A. Not to my knowledge. 7549

Q. What territory is he in now?

The Master: You need not answer that.

Q. Is he still in the department?

A. As far as I understand, yes.

Q. How long was he in the territory?

The Master: You need not answer that.

Q. Is it a fair statement, Mr. Quinn, of the fact to state that east of Third Avenue and north of 14th Street and south of 23rd Street, that in that territory there have been few sales in the last fifteen years?

A. I am unable to answer that in the last fifteen 7550 years.

Q. Would your memory cover the last twelve years?

A. No, sir.

Q. The last seven years?

A. No, sir.

Q. Have the Deputy Commissioners a book of rules?

A. Would you kindly explain that?

Q. Or a set of rules?

A. From the Department?

Q. Or regulation?

A. Why, do you mean a set of rules that are im- 7551 perative in regard to their work?

Q. In regard to their work?

A. No. They receive instructions from the Commissioners every year.

The Master: Weren't you asked that question last week?

Mr. Ransom: I think it was another witness.

7552 Q. You have certain rules and regulations that are annually issued?

A. We have certain rules and regulations that govern the Department.

Q. And that refer to your work, the manner of conducting your work?

A. Why, it relates to what time we turn in the work, and——

Q. To illustrate what I have in mind, you have rules as to cost per cubic foot of buildings, and so on, to guide you in your work?

A. There is a book, but I don't consider them
7553 rules. I believe it is up to a man's own judgment as to what he should use.

Q. Are there any regulations that cover that branch of your work?

A. Not that I can call regulations; there are suggestions.

The Master: As to improvements?

The Witness: As to improvements, yes.

The Master: Are there any suggestions as to how you should value land?

The Witness: No.

The Master: Except as the charter requires?

The Witness: Except as the charter requires.

7554 The Master: I take it from what you have said that there has been furnished to the Deputies estimated costs of brick construction and woodwork, etc.?

The Witness: Yes, but we are not bound or obligated by that.

The Master: In other words, it is to give you an idea of what those things cost?

The Witness: Yes, but it is not a fixed rule.

Mr. O'Brien: Your Honor, I think I will sus- 7555
pend here, with the reservation that I will recall the witness later.

The Master: You mean you have no further questions at this time on cross examination?

Mr. O'Brien: Well, I will not say that.

The Master: Have you any more?

Mr. O'Brien: I am always ready to go ahead.

The Master: Do you want to ask any more questions?

Mr. O'Brien: For instance, the witness has not got his field book which covers the territory adjacent to this section. 7556

The Master: I know that.

Mr. O'Brien: That, and a number of things on which he has not come prepared to testify, leads me to stop here, because it would be a waste of time.

The Master: Let us have no misunderstanding about it. I tried to make it perfectly clear. I will let you bring the witness back for further cross at your convenience. I take it you will have in mind his convenience, in view of your attack on the complainant's lack of consideration. What I want to know is whether you have any further cross examination now, 7557
so that I can let this witness go, so far as the complainant's responsibility is concerned.

Mr. O'Brien: So far as the detail of issuing a subpœna is concerned?

The Master: Yes.

Mr. O'Brien: That is the only change in the status of the witness?

7558 The Master: That is the only thing that is in my mind.

Mr. O'Brien: Then I will suspend at this time.

The Master: Then you are through; you have nothing further to ask at this time?

(No response.)

The witness is excused. Call your next witness.

CHARLES STROBEL, called as a witness in behalf of the complainant, being duly sworn, testified as
7559 follows:

DIRECT-EXAMINATION BY MR. RANSOM:

Q. What is your full name?

A. Charles Strobel.

Q. And the address?

A. 1686 Avenue A.

Q. What is your position with the city of New York?

A. Deputy Tax Commissioner.

Q. How long have you been such?

A. Eight years.

Q. In 1918, prior to October 1st, were you assigned to a particular district; if so, what dis-
7560 trict?

A. I was assigned to District No. 4, running from Worth to 14th, and from the Bowery over to the Hudson River.

Q. Did that include block 239, Hester street?

A. Yes, sir.

Q. Did you in accordance with the requirements of the charter on or before October 1, 1918——

The Master: You better show how he came into the public service.

Q. Did you take a civil service examination? 7561

A. Yes, sir.

Q. An examination concerning your qualifications for the position?

A. Yes, sir.

Q. And you passed that examination?

A. Yes, sir.

Q. And came on an eligible list?

A. Yes, sir.

Q. And you were appointed to your present place from that eligible list?

A. Yes, sir.

Q. And you now hold a position in the competi- 7562
tive classified civil service of the state?

A. Yes, sir.

The Master: On being appointed did you have to take an oath of office?

The Witness: Yes, sir.

The Master: That is so with reference to all the deputy tax commissioners, is it?

The Witness: All the deputy tax commissioners.

Q. On or before October 1, 1918, did you make up and furnish to the tax board a detailed statement of all the taxable property in your district? 7563

A. I did.

Q. And you personally visited and examined all this property?

A. Examined each parcel.

Q. And you showed in this detailed statement as to land the sum for which, in your judgment, each separately assessed parcel would sell under ordinary circumstances, if wholly unimproved?

A. Yes, sir.

7564 Q. Referring to the lots located at the northeast corner of Hester and Elizabeth Streets——

The Master: What was your business before you went into the Tax Department?

The Witness: I have been a clerk in the Department for thirteen years previous to my appointment.

The Master: Which department?

The Witness: In the Tax Department. I was in the Tax Department twenty-two years.

Q. What was your position?

A. I was a field clerk assisting a deputy.

7565 Q. What was your position previous to that?

A. Previous to that I had several clerical positions in dry goods houses.

Q. How many years had you been on this district?

A. In this district three years.

Q. And during the time that you were field clerk to a deputy you were on various districts throughout Manhattan?

A. Yes, sir.

Q. Including this district?

A. No, districts up town.

7566 Q. Referring to this lot in Block 239, the lot located at the northeast corner of Hester and Elizabeth Streets,——

The Master: Known at Lot No. 1?

The Witness: Yes, lot No. 1.

Q. Lot 1 and Lot 5. First, as to Lot 1 of Block 239, what in your judgment was the sum for which under ordinary circumstances that lot would sell if wholly unimproved?

The Master: Do you make the same objection to this line of testimony, Mr. O'Brien?

Mr. O'Brien: The same; yes, sir. 7567

The Master: The objection is overruled.

Mr. O'Brien: And the same objections as have previously been made to all of the testimony of the Deputy Commissioners?

The Master: Yes, it is so noted.

Mr. O'Brien: Exception.

Mr. Chambers: Exception.

Mr. Hayward: Exception.

Mr. Ransom: I am asking for the figure on October 1, 1918, or the figure reported by you.

A. I appraised that property, the land, at $90,000. 7568

Q. That is the figure given by you in your report as of October 1, 1918?

A. Yes, sir.

Q. And that represented your judgment?

A. That was my judgment of the sum for which that parcel would sell.

The Master: Wholly unimproved?

The Witness: Yes, sir.

The Master: For the land alone. Is that the sum that you swore to in the figures that were filed?

The Witness: Yes, sir.

Q. As to Lot No. 5 of Block 239, what was the 7569 figure reported by you to that block?

A. $37,000.

Q. And did that represent your judgment as to the sum for which that lot would sell under ordinary circumstances as wholly unimproved?

A. Yes, sir.

The Master: That was the sum, then, in your detailed report that was sworn to?

The Witness: Yes, sir.

7570 CROSS-EXAMINATION BY MR. CHAMBERS:

Q. Mr. Strobel, what is the size of Lot 1, Block 239?

A. Lot 1 is the northeast corner of Hester and Elizabeth Streets, 100 feet square.

Q. One hundred feet square?

A. Yes, sir.

Q. All four sides one hundred feet?

A. Well, one interior side is one inch less, 99 feet 11 inches.

The Master: And Lot 5?

The Witness: Lot 5 is 50 feet by 100, and
7571 adjoins Lot 1.

The Master: Adjoins it where, on Elizabeth Street?

The Witness: On Elizabeth Street.

The Master: It is 50 feet on Elizabeth Street?

The Witness: Fifty feet, and 100 feet deep.

Q. How did you value that Lot 1, by the square foot or front foot?

A. Why, no, I adopted a unit of $720 per front foot on Hester Street, and that is $18,000 a lot.

Q. And how much on Elizabeth Street?

A. I did not figure Lot 1 as coming in from
7572 Elizabeth Street. I considered it as a corner, adopting the Hester Street land value.

Mr. O'Brien: What was that figure?

The Witness: $720 a front foot, or $18,000 a lot.

Q. What did you allow for the corner of Hester and Elizabeth Streets?

A. Fifteen per cent additional for the corner lot.

Q. Any plottage on Lot 1?

A. Yes, a trifle over ten per cent there. 7573

Q. And how did you value Lot 5?

A. Why, I based that on the unit of $680 a foot front on Elizabeth Street.

Q. Any plottage for that?

A. Why, a trifle less than ten per cent.

Q. Did you value those two lots with the improvements thereon?

The Master: If you just valued them without improvements, give us the figures?

The Witness: I do not understand.

The Master: Did you in your report place a value on the lots improved? 7574

The Witness: Yes, sir.

Q. And for the taxes of 1919?

A. For the taxes of 1918 and 1919 also; yes, sir.

The Master: These figures that you have just given us as to the land value were for 1919?

The Witness: Yes, sir.

The Master: Were they the same for 1918?

The Witness: No, I made a decrease from the amount for 1918, also from the assessment for 1917.

Q. That is, you mean they were less for the 1918 7575 taxes?

A. The corner lot was assessed at a trifle less for 1919 as compared against 1918. The amount was $3,000.

Q. How much was it in 1917?

The Master: $3,000. less.

A. $3,000. more.

Q. 1916 the same?

7576 A. Yes, sir.

Q. How many years back have you had this?

A. Why, for the three previous years, 1919, 1918 and 1917.

Q. Then in your judgment it has decreased in value?

A. Yes, sir.

Q. $3,000.?

A. Yes, sir.

Q. Since 1918?

A. Yes, sir.

Q. How about Lot 5; did you decrease that?

7577 A. No, Lot 5 I retained the same amount.

Q. For 1917 and 1918?

A. For 1917, 1918 and 1919.

Q. What has happened to Lot 1?

A. That section is more or less undesirable; it is in the center of an Italian tenement neighborhood and values are decreasing.

Q. Why did you not take a little off Lot 5 too?

A. Well, in my judgment Lot 5 is already assessed low enough.

Q. Is that going down-hill, the property in that neighborhood?

A. I think so.

7578 Q. Would you imagine you will take $3,000. off next year?

A. I am not assessing it for this year.

Q. What was on Lot 5; what improvements, or what did you see?

A. Why, a storage building, three stories, with a one-story extension.

Q. A tenement house?

A. No, used for storage purposes by the gas com- 7579
pany.

Q. And Lot 1, what is on that?

A. That contains an office building and meter station in the basement. Also three stories and an attic.

Q. They are old buildings, are they not?

A. I should judge so, yes, from their appearance.

Q. Did you consult the report filed by the company to the Tax Department?

A. I saw it later on; yes, sir.

Q. How did the prices in that compare with your assessed valuation?

7580

A. Well, I have not got that report with me just now, so I cannot give you the exact figures; but I think it is somewhere in that neighborhood, because I considered it as an element of value.

Q. Did you know of any sales of property around in that neighborhood?

A. Oh, yes, there were a large number of sales all around there.

Q. Do you remember any of them?

A. I have a tabulation here of some. This will take quite some time, if you intend to go into all these sales. I have a list of sales in this particular volume here that takes up about ten or twelve 7581
pages.

Q. Was there a sale of the corner lot at Bowery and Hester Street?

A. Bowery and Hester, the southeast corner?

Q. Yes.

A. I believe there was. A lodging house, isn't it?

Q. I do not know what is there. I have never been on the Bowery.

7582 A. You mean the southwest corner of Bowery and Hester?

Q. Yes.

A. Yes, sir; that was sold for $120,000.

Q. How much was it?

A. 50 feet by 100, covered with a six-story building.

Q. It was sold for how much?

A. $120,000, in 1911, according to the entry in this book here.

Q. It has not any recent sales, though?

A. Not lately, no. Unless it has been sold since
7583 the time I left the district. I have not kept any record since; my successor is doing that.

Q. Have you any other sales around in that locality?

A. Great Scott, I show you this list here.

Q. That same lot, was it resold?

A. No, not that same block, but a great number of others. These are all sales.

Q. Do you mind if I look at this a minute?

A. Sure.

Q. Where is block 239; how are those?

A. I have classified those according to the class of property. Here is a list of all the loft sales
7584 in this particular district. There is a list of all the tenements, the private dwellings, tenements, and so forth, lofts.

Q. Was that lot right to the north of this lot 5—was that sold?

A. I would have to locate that first in order to answer your question. Where is the lot? Block 239, lot what?

Q. I do not know.

A. Lot 5, and that would be lot 7. It is a furni- 7585
ture factory?

Q. Yes.

A. Is that the one you refer to?

Q. Yes.

A. (After examining book.) Lot 7 was sold in February of this year, but the consideration was not given. It was transferred nominal, with revenue stamps of $3. We don't know what it sold for.

Q. That is a little deeper?

A. Oh, yes, there is a furniture factory on that lot.

The Master: You could not find out what it 7586
sold for, could you?

The Witness: No, sir. They reported it as nominal, with revenue stamps of $3.

Q. It is deeper and narrower?

A. Yes, sir.

Q. Lot 8, have you got any sales on that?

A. No, sir.

Q. Lot 9?

A. No, sir.

Q. Lot 10?

A. Yes, sir. On lot 10 there is a sale back in 1906.

Q. What is on there?

A. Why, that is a six-story Italian tenement. 7587

Q. How about lot 11?

A. Lot 11 is the same character of improvement, Italian tenement. No sales.

Q. This is an Italian district here?

A. Yes; that is all an Italian district.

Q. Little Italy, is it?

A. Yes, sir.

Q. How about lot 37?

A. On the Bowery?

7588 Q. Yes.

A. That is for lodging houses belonging to the Astor estate, and of course, there has been no sale there.

Q. Lot 36?

A. No sale there either.

Q. Lot 35?

A. No sale.

Q. Lot 34?

A. On 34 there has been a sale; yes, sir.

Q. What did that sell for?

A. No, pardon me, that was a mortgage; no sale.

7589 Q. How much was the mortgage, $25,000?

A. I don't know.

Q. Lot 23?

A. There has been no sale along the Bowery there until we get up to—not even here (indicating). No, sir, no sale anywhere on that.

Q. How about across the street on lot 33?

A. On 33 no sale.

Q. Lot 34?

A. No sale on that block frontage.

Q. Any on Elizabeth Street frontage, 32 and 30 and 31?

A. Yes, we have there. 27 and 28 were sold.

7590 Q. How much was 27 sold for?

A. That was sold for $71,000 in 1916.

Q. What is on that?

A. A six-story Italian tenement.

Q. And on 28, what was that sold for?

A. Why 27 and 28 were the two lots that were sold together for $71,000.

Q. Those two?

A. Those two together; yes, sir.

Q. With a frontage of about 49 feet? 7591

A. Forty-nine feet.

Q. By 94 feet deep? What are the sales? 26 and 25?

A. We have a sale on Lot 31 for $5,600, in 1915.

Q. What was on that?

A. Why, that is a very old Italian tenement.

Q. That is awfully cheap. That is 20 by 47?

A. The building is only 31 foot deep, three stories.

Q. Sold for how much?

A. $5,600.

Q. Building, land and everything?

A. Yes, sir. 7592

Q. Any other sales?

A. Yes, sir.

Q. On the adjoining lot, No. 32, that sold for $8,500 in 1916. What was on that?

A. Same character of improvement, very old Italian tenement. It is very small, 20 by 47.

Q. Any others?

A. Not on that block front. There are a large number of sales all around that section.

Q. You have testified to enough to indicate that the property there, even a lot with a building on it—there is one $5,000, one $7,000——

A. Yes, and the other one $8,000. 7593

Q. Very undesirable, isn't it?

A. Speaking generally, yes, sir, it is undesirable in that section.

Q. You anticipate if it is going down hill there will be further reduction, perhaps?

A. I cannot speak for what is coming, because I am not assessing there any more.

By the Master:

Q. When you say, Mr. Strobel, that property is

7594 undesirable, it is undesirable from the standpoint of the character of the property?

A. Exactly.

Q. But compared with the value of property elsewhere that thickly populated section over there is a cause for pretty high values for land, isn't it?

A. Well, the assessments already reflect that condition which exists over there. The downward trend has been for years, because the improvements are old, very old and dilapidated. The people do not care to live in them, and the rentals they receive are very low.

7595 Q. And that is reflected in the land values?

A. It is already reflected in the land values and it is already reflected in the assessment.

Q. In estimating these lots 1 and 5, have you appraised them generally on the basis of what you have found the trend of values to be, having in mind the various sales?

A. I have considered everything that had a tendency to create values.

By Mr. Chambers:

Q. Did you put the full value on the property?

A. Yes, sir.

Q. All it would stand, in your judgment?

7596 A. All I thought it was worth, or what I would be willing to pay for it.

Q. That is for both lots?

A. That is for both lots; yes, sir.

Cross-examination by Mr. O'Brien:

Q. Mr. Strobel, how long did you cover that territory?

The Master: He answered that; he said for three years.

A. Why, three years, yes. 7597

Q. You have been in the Department seven?

The Master: More than that.

A. Twenty-two.

Q. Twenty-two years a deputy too?

A. No; only nine years a deputy.

Q. You heard Mr. Quinn's testimony this afternoon about the departmental methods?

A. Yes.

Q. The uses of a field book and reference to the *Record and Guide*, and such information as it gives, and your answers would be the same to questions put to you about those things? 7598

Mr. Ransom: I object to that.

A. Practically about the same, because we all arrive at real estate knowledge from the same channels, as every real estate man studies conditions of sales, mortgages, leases, and so forth, earning power—put ourselves in the place of a prospective purchaser, and consider what it is worth to you.

Q. The earning power has quite an influence on your judgment?

A. Oh, yes.

Q. And as of last year, the earning power——

A. What you could do with it at the present time, yes, sir. 7599

Q. If this property were vacant, and you were the vendee last October, to what use would you put it?

A. I think it is suitable——

Q. Having in mind deriving the best return out of the property?

A. I think it is suitable for a medium class Italian tenement or for cheap lofts.

7600 Q. Have you ever gone into the question of figuring out whether you could get enough return to warrant building tenement houses on it, in conformity with the tenement house laws?

A. Oh, certainly; that is part of my business in analyzing conditions and finding out what could be done with it.

Q. What are they getting for rents in that neighborhood?

A. There is no hard and fast rule.

Q. On Elizabeth street?

A. They get from $3 up to seven and eight, de-
7601 pending upon the class of improvements. There are some old rookeries there in which you can hire a room for $2.

Q. Are there any which will bring $7 a room?

A. Yes.

Q. I am not speaking of a stress of conditions.

A. Under normal conditions.

Q. What place?

A. Why, there is an Italian tenement which was erected only a few years ago, two blocks—no, one block north of this location here, and I believe there the rentals are $7 and $8 a room. They have electric light and steam heat.

7602 Q. Well, they are very rare, are they not?

A. They are the exception. The average rental of a six story walk-up would be $5 or $6.

Q. You know where there is any land value or any substantial land value, that it is a profitless proposition to put up a house where you cannot get $7 or $8 a room?

A. Well, that depends upon the price you have to pay for the land.

Q. I mean in this territory, isn't that so? 7603

A. No, because I consider these lots comparatively cheap for tenement house improvements.

Q. Of course, now you are talking about the value of buildings, the cost of material and the cost of labor, as of last year, and the cost of erecting a house. Take a radius there of five blocks, how much improvement has gone on,—five blocks north, south, east and west?

A. All the blocks are completely built up. There is no vacant lot.

Q. And it has been for years?

A. The older building.

The Master: Let the witness answer the question. 7604

Q. Were you finished? Had you finished the answer?

A. Yes, sir.

Q. How far would you have to go from this neighborhood to find a house erected within the last ten years, a tenement house?

A. Within the last ten years?

Q. Yes.

A. I guess you would not have to go so far.

Q. Do you happen to know any?

A. No, because I only assessed there during the 7605 past three years, but I know a large number of these modern light six-story walk-ups have been erected in that time.

Q. Could you name some that have been?

A. I would have to bring over the old field book previous to this one, in order to tell you.

Q. I am not speaking of the whole East Side, but of a territory five blocks either way?

7606 A. Sure, I have no doubt you could perhaps pick out a dozen that have been erected in ten years.

Q. You are not speaking with absolute certainty?

A. I am not, no, because I have not got the record.

Q. You know as you go up Mulberry Street, that is just one block away, isn't it?

A. Yes, sir.

Q. And Mott Street, that is a block away?

A. Yes.

Q. And Baxter Street, the same as Baxter Street, that is three blocks away?

7607 A. Yes.

Q. And Grand Street, you don't recall a house being built along there in a long while?

A. Yes, I recall two houses within four years, one in the——

Q. On what street?

A. One on Elizabeth Street and one on Grand Street.

Q. Built when?

A. A year previous to the time I took charge of this district.

Q. Built by whom?

A. I don't know the contractor's name, I did not 7608 inquire into that.

Q. Do you happen to know the locality?

A. Oh, yes, certainly.

Q. Where are they?

A. There is one on Grand Street, Lot No. 12, for instance, right here, and that is a new one built in 1916, Lot No. 12, a six-story walk-up, built in 1916, which is less than 200 feet away from the Consolidated Gas Company's property.

Q. Just confine yourself to that property. How 7609
big a plot was it?

A. That is 75 feet front by 100 feet deep, the building was back 87 feet, six stories, put up in 1916.

Q. How far?

A. 1916 it was erected, and I assessed it for 1917.

Q. Not 87 feet?

A. 87 feet, yes, sir. That is what our record says. They have a large interior court here. The larger proportion of these buildings are 87 feet or 88 feet deep.

Q. Those are under the old law, but they could 7610
not build 87 feet under the new law?

The Master: If they picked up their light area in the front or side.

Mr. O'Brien: No.

The Witness: Under the 70 per cent law?

Q. No.

A. This building was erected in 1916, and I know it has a large interior court.

Q. The plot must be larger?

A. It is only 100 feet deep. This is a very up-to-date house, steam heat and electric light, and there are a large number of storekeepers around there. 7611

Q. You take the corresponding property, corresponding lots, and I mean when I say corresponding similarly located on Mott and Hester, Mulberry and Hester, Baxter and Hester, how do your units compare?

A. Well, the further west I go here, the lower the unit of value becomes, because I think it is worth a little more towards the Bowery than five blocks away.

7612 Q. That is the theory under which you have set up your values?

A. Yes, sir.

Q. And does that obtain the further north you go too?

A. Why no.

Adjourned to Thursday, September 4, 1919, at 9:15 A. M.

Last Complainant's Exhibit—206

Last Defendants' Exhibit—U

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CONSOLIDATED GAS COMPANY OF NEW YORK vs. NEWTON, ETC., *et al.* 7615

Before ABRAHAM S. GILBERT, Special Master.

NEW YORK, September 4, 1919.

Met pursuant to adjournment.

Present: MR. RANSOM, MR. VILAS, MR. GOETZ, of Counsel for Complainant.
MR. CHAMBERS, of Counsel for defendant Newton.
MR. HAYWARD, MR. CLARK and MR. NEUMANN, of Counsel for Public Service Commission. 7616
MR. O'BRIEN, of Counsel for defendant Swann.

CHARLES STROBEL resumed.

Mr. O'Brien: Your Honor, before proceeding with the cross-examination of the witness Strobel, I desire to call to your attention the fact that on May 16th, when we were before Judge Mayer, arranging the details of the order appointing the Master, discussion was had as to 7617
some matters concerning the trial of this case, and a request was then made by the defendants of the complainant to furnish us with an inventory. This was urged as one of the ways in which expedition might be had in the trial of this case. It was at that time directed, if my memory serves me now, directed to counsel for the complainant to serve us with

7618 an inventory. Repeated requests have been made for that inventory, a list of the property that they are going to ask the Court to put a valuation on as the base upon which a fair return may be computed in this case.

Subsequently a joint letter was sent by the defendants, requesting that the Company furnish us with a list of the costs, original costs of the property of the complainant, and, where the costs were not available to the complainant, a list of the estimated costs, and the bases of the estimate. This was with a view of facilitating the examination by the defendants of
7619 the complainant's properties and preparing the defense in this case, as well as the cross-examination of the complainant's witnesses. That has never been squarely met, that request, except that when we were before Judge Mayer a week ago, upon a motion for a modification of the order appointing the Master, so the Master might have some discretion in granting more liberal adjournments, and so that he might be empowered to put the case over in his judgment during the heated term, the counsel for the complainant did make answer on that proposition, first, as I recall it, in a gen-
7620 eral way, that he did not feel that the complainant was called upon to prepare the defendants' case; and in the second instance, by a general statement that they were looking up some data of that kind. I am endeavoring to give your Honor as clear a statement on this subject, where I am dealing with facts that have occurred, as my memory will allow me to give you. The inventory has, as the record shows, been asked for several times dur-

ing the progress of the hearing of this case, 7621
and the request was again repeated before Judge Mayer last week, and as I understand the Judge's words, there was a direction that we be furnished with an inventory, and there was a statement that we would have it in a few days; and at the end of the conference with Judge Mayer, he decided to withhold any decision upon the motion for a modification of the order until the inventory had been furnished.

Now, I submit, your Honor, that where we have been pushed in the trial in the hot weather, sometimes morning and afternoon, and other times from 9:15 to 1:15, where every 7622
step has been taken to rush this thing on to a conclusion irrespective of the convenience of counsel, of their right to a vacation, which is enjoyed by every public official, and their many other engagements as public officials; where so much has been done to produce expedition for the complainant, I respectfully submit, your Honor, that this matter ought to be determined upon here and now. In other words, if we are going ahead, if public moneys are going to be spent, if the defendants are going to be asked, before the complainant has proven a case and shown its right to be here in court, if 7623
we are going to be asked to spend thousands of dollars upon investigators and statisticians and experts and engineers, we submit that we ought to be told what they are going to ask the Court to hold as the base upon which a fair return is to be predicated in this case, so that some of the expense may be eliminated which the defendants necessarily will incur, so that the trial may be expedited, and so that the de-

7624 fendants may be treated with the usual fairness expected in a matter of this importance.

I am emphasizing these things, but not with acrimony, and not with any desire to say any more on this subject on the record; but I call to your Honor's attention those two vital matters, the original cost of property, the inventory of the properties they are going to include in this case, so that we may attain some reasonable expedition, that being made the slogan of the complainant's *modus operandi* from the beginning, and so also that we may not be kept
7625 constantly up against a barrage, as Col. Hayward has put it in a previous talk on this subject, not knowing from day to day what is going to happen.

The Master: Let me make this suggestion before anybody else makes a statement.

Mr. Ransom: Why does Mr. O'Brien make all of the statements?

The Master: One minute, please. Finish the cross-examination of this witness, let the other deputy commissioners go about their business, then I will permit Col. Hayward and Mr. Chambers and Judge Ransom all to address
7626 themselves to the matter that Mr. O'Brien has brought up.

Mr. Ransom: There is really no use, because——

The Master: One minute. I am not going to keep this witness here to hear this discussion. Finish the examination and let these men go, and then I will let you make your statement with reference to it.

Mr. Chambers: I have something of importance to say about it.

The Master: I am not going to keep these witnesses here to listen to these speeches. 7627

Mr. Chambers: All right.

Mr. O'Brien: Well, you can call them counsel's speeches, or anything you want to, but the record is going to note from day to day my views on the way you are treating the defendants.

The Master: You promised this witness you would let him go in twenty minutes this morning. Let us see whether you can let him go, then we will take up this other matter.

CROSS-EXAMINATION CONTINUED BY MR. O'BRIEN: 7628

Q. Mr. Strobel, you were a clerk in the Department before you became Deputy Commissioner. Prior to that time did you deal in real estate?

A. No, sir.

Q. Have you ever had a real estate office or engaged in the real estate business, the buying and selling of real estate?

A. No. The charter prohibits city officials from engaging in any outside business.

Q. Have you ever bought or sold real estate?

A. No, sir.

Q. Have you ever appeared in an action, a litigation, as a real estate expert? 7629

A. No, sir.

Q. Before you became a Deputy Commissioner, what branch of the Tax Department's work were you engaged in?

A. Why, as an assistant to Deputy Tax Commissioners for thirteen years.

Q. In that time were you located in one particular district, or several?

7630 A. No, several districts.

Q. In placing your assessment for the year 1919, upon the property on Hester Street of the complainant, did you in estimating the value of the land consider at all the fact that it was improved?

A. No, I assessed all land on the same basis when I fixed the unit of value, considering to what use it might be put, looking at it from the point of a prospective purchaser.

Q. Were you influenced by the fact that it was improved with a building used in the gas business?

A. Not at all, because the same unit which I
7631 applied to the Gas Company's property are applied to all adjoining property as well.

Q. Did you in estimating the value of the land just give it the valuation that you would a vacant piece of property?

A. That is the basis upon which I appraise all land, what I think it would be worth to me.

Q. Did you consider the cost of removing the building?

A. No, sir.

Q. I will complete that question. Should it go into the hands of a vendee in a sale which was not a forced sale, did you consider the cost of removing
7632 the structure?

A. No, sir.

Q. Do you know anything about the character of the soil on that corner?

A. It is situated on high land.

Q. On what?

A. High land. It is on the top of a hill.

Q. Did you go into the question of whether there is a rock formation below the surface there?

A. To the best of my belief and knowledge, there 7633
is no rock formation around it; sandy soil.

Q. I asked you whether you went into that matter?

A. Not specifically, no, sir.

Q. It is all sandy soil?

A. So I believe.

Q. Have you ever given that matter any particular attention?

A. I have noted excavations near by, and there was sandy soil below the surface; did not appear to be an outcropping of rock anywheres in that vicinity.

Q. Do you know whether there are any subter- 7634
ranean streams in that section?

A. No, sir, not on top of the hill. Farther west I think there are, towards Center Street.

Q. Have you ever seen the old land maps of the city?

A. I have.

Q. As to this section?

A. Yes, sir.

Q. Will you say that there is no subterranean stream running across any of this property?

A. That I could not specifically affirm.

Q. Well, you knew there is such a thing in New 7635
York frequently, don't you?

A. I do.

Q. You know that it is a matter sometimes of a great expense?

A. Yes, sir.

Q. In laying foundations?

A. Yes, sir.

Q. You know many times builders have been al-

most wrecked by the unforeseen or unprovided for expense of such excavations?

A. Yes, sir.

Q. That would make considerable difference, wouldn't it, in the value of land?

A. Oh, yes.

Q. If it were there?

A. A bad soil with difficulty in laying foundations will, of course, make a great difference in the value of the property.

Q. You spoke of this as an Italian section, as part of the Mulberry Street section?

A. It is the Mulberry Street district there, yes, entirely occupied by Italian tenements and a few scattered lofts here and there.

Q. Is this a business or residential section on the zoning map?

A. The section is entirely unrestricted.

Q. Are you sure of that?

A. Yes, sir; it is only restricted with reference to the height of buildings, that is all.

Q. You mean unrestricted as to uses, when you use that expression?

A. Exactly. Any kind of an improvement can be built there, and it is only restricted with reference to the height of the buildings, limiting the height of the buildings to twice the width of the streets.

Q. That is what they are called in the zoning resolution, a two-times district?

A. Yes, sir, limiting the height of buildings to twice the width of the street.

Q. Has business invaded that section yet?

A. Why, a few blocks west of that there is some

up-to-date loft buildings erected, within the past ten years, but not in this immediate vicinity. 7639

Q. Well, it is known as one of the congested quarters of the City, Elizabeth Street, Mott and Mulberry and Hester?

A. It is somewhat congested, yes.

Q. Wouldn't you call it as congested as any part of the lower East Side?

A. Oh, no, not as much as that.

Q. Not as much as the worst?

A. No.

Q. But pretty badly congested?

A. Yes.

Q. Do you know the uses to which the complainant puts this property? 7640

A. I do.

Q. Are they particular uses?

A. Yes, sir.

Q. What are they?

A. The corner parcel is used as a loft building, and the upstairs apartment for storage, and the basement of it is occupied as a meter testing station and repair shop. The adjoining parcel to the north of it is used entirely for storage purposes.

Q. Storage?

A. Yes, sir. 7641

Q. How much of it is used for storage?

A. Well, on the ground floor there is a small office, and there are a few offices on the floor up above, the balance is used entirely to store goods.

Q. What kind of goods?

Mr. Ransom: I object to the question.

A. Well, the necessary paraphernalia used by the Gas Company.

7642 The Master: I won't permit any more questions on that. Objection sustained to this last question.

Mr. Ransom: This is not competent as to the uses of the property.

The Master: Objection sustained as to the last question.

Mr. O'Brien: Your Honor, I have in mind that the value of the land here, talking now about market values, may be affected by the uses to which this property is put.

The Master: No. You can ask him anything
7643 tending to show that his judgment as to market value has reference to use, but we do not care whether they sell appliances or something else there. I think you have brought out enough to show the purpose.

Mr. O'Brien: That is only incidental to the main point that the uses may have already affected market values.

The Master: Let us see if it has. I will sustain that objection.

Q. Is there a shop of any kind within a radius of a block there?

A. What would you call a shop, Mr. O'Brien?

7644 Q. A factory, where one or more people are employed.

A. Yes, there is a factory right to the north of this property, used as a furniture factory.

Q. How far north?

A. Why, it adjoins the northerly parcel of the Gas Company, the adjoining lot.

Q. Is there any other factory within a radius of a block?

A. Yes, I think there are a few. There are a few 7645
small factories on the Bowery frontage of this block. You see there are scattered lofts used for manufacturing purposes all around in this vicinity, mixed in with the Italian tenements.

Q. Yes, the whole section is spotted?

A. Scattered all around.

Q. By these uses?

A. Exactly.

Q. Did you compute the amount of space that is used for storage purposes when you estimated the value of this plot?

A. In which parcel, Mr. O'Brien? 7646

Q. In both parcels.

A. In the Gas Company's property?

Q. Yes.

A. Why, no, I did not consider the use to which the land was put at all. I appraised it as land itself, irrespective of the use to which it was put.

Q. Are you ever influenced by the use of the improvements on a piece of land, in estimating the value of the land?

A. Sometimes, yes, sir.

Q. And does not the question of the uses of the adjacent property influence your judgment as to the land? 7647

A. It does occasionally, but that depends upon the location and the use to which it is put.

Q. When you set out on the proposition of estimating the value of lands in your section, you do not, for the purposes of estimating the value of the land, hold it to be—for the purposes of your computation, one vast, open vacant space?

A. No, I consider to what use the land could be put, because that is the basis of its earning power.

7648 Q. And when you come to a given piece of land, a lot or a plot, and you are estimating the value of that land, you do not assume when you are estimating that value, that all the surrounding land is vacant, do you?

A. No, of course not.

Q. You consider that the other land, adjacent to or in the neighborhood of the plot you are assessing is built as it actually is?

A. Sure.

Q. Improved with the elephants or valuable improvements, or whatever they may be.

7649 A. I consider the local conditions existing there.

Q. The local conditions?

A. Exactly.

By the Master:

Q. Do you likewise consider the trend of improvement as to a change in character?

A. Why, of course. That is one of the fundamental bases of appraising property, to know what is coming.

Q. In other words, taking a tenement house section like this, if you see that the trend is for loft property or factory property, and that that trend means to increase or decrease the value of the land

7650 for improvement purposes, that bears upon the value of the property for taxing purposes?

A. Why, certainly, sir. It is our business to consider all these local conditions which would have a tendency to increase or depreciate values.

Q. Just one more question. The mere fact that on a particular piece of property there is a tenement house or a factory does not change the value

of that particular piece of land, its trend is to a different kind of improvement? 7651

A. Oh, no, not necessarily.

Q. In that neighborhood?

A. No, sir.

By Mr. O'Brien:

Q. In estimating the value of this land, did you have in mind that it could be used for profitable purposes in putting up tenement houses?

A. Why, that was the basis of my decision in fixing a certain unit value of $18,000. per lot. I considered land there is worth that much if improved with an adequate improvement, in that section. 7652

Q. Did you think that the best improvement would be a tenement house?

A. Either an up-to-date tenement house or a loft building. Both of them would utilize the full earning capacity of the land.

Q. Would that be ideal to put a tenement house up against these factories?

A. Oh, yes, the property is entirely surrounded by tenement houses. Factories are the exception in this particular case here. As I told you before, they are scattered here and there only.

The Master: Is there still a demand for a better class of tenements? 7653

The Witness: Oh, yes, sir.

Q. You would plant a tenement in this unrestricted district?

A. If I owned the property I would erect an up-to-date tenement, yes.

Q. In this unrestricted district?

A. I would.

Q. In that way you would get the best return?

7651 A. I think I would; yes, sir. Because I know there is a demand for a better kind of apartments in that section.

Q. This improvement of the gas company is how many stories? Three?

A. The corner building is three stories and an attic, and the parcel adjoining it on the north is five stories.

Q. Is it a hip roof?

A. Is it what?

Q. Is it a hip roof?

A. What do you mean?

7655 Q. The building, what kind of a roof has it got?

A. A tin roof.

Q. You called it an attic, didn't you?

A. The corner building has a peaked roof.

A. A peaked roof?

A. Yes, sir.

Q. Yes, that is what I meant. It is a garret?

A. Yes, sir.

Q. Were you in it?

A. Yes, sir.

The Master: Whether there was a garret there or not, did it make any difference in the value of the land?

7656 The Witness: It did not affect my appraisal of the land at all.

Q. Well, all of the properties around there stamp the district in your mind, one way or the other, to its advantage or disadvantage, do they not?

A. Certainly.

Q. You take a territory where you are making assessments and the general trend of things in the

building line, the existing structures, the present uses, do have an influence on the value of the land? 7657

A. Well, that determines the character of the locality, certainly.

Q. It certainly does, in your mind?

A. Certainly.

Q. To that extent, then, you are influenced by it?

A. Certainly. We have to consider local conditions in making appraisals, because that is what determines value.

Q. How many saloons are around the corners here? 7658

A. In former years there used to be quite a number. In recent time there have not been so many.

Q. Get your map, Mr. Strobel, and show us that.

A. My map does not show the number of saloons on each block.

Q. Your field notes would give us that information, would they not?

A. No, sir. I think on a whole block there are only two or three saloons.

Q. Two or three?

A. That is all.

Q. That is all?

A. Well, these are large blocks, you know, and when you consider the location, adjoining on the Bowery, you would expect a great many more. 7659

Q. What is right opposite this, on Hester Street?

A. Same thing. Italian tenements.

Q. I mean on the ground floor.

A. Italian stores.

Q. What use are the stores put to?

A. Why, the various stores of the locality, for

7660 food supplies of various kinds, and occasionally there is a saloon on the corner, and then you have the butcher and grocer and so forth.

Q. Do you recall what is directly opposite this building on Hester Street?

A. I do not.

Q. Do you recall what is on the other street?

A. Which street, Elizabeth Street?

Q. Yes.

A. A very old—small old buildings, with a few small food supply stores on the ground floor, I believe. You see, I have been away from this sec-
7661 tion now for over a year and a half, and it is impossible for me to recall every itemized detail of that particular block.

Q. Didn't you give us valuations as of October 1, 1918?

A. Yes, sir, but our work commences on April 1st. This was the first book on which I worked at that time, because in appraising our district we can't wait until the last week. This district runs from Worth street to 14th street and from the Bowery to the river.

Q. So that your valuation in reality is of about April 1, 1918?

7662 A. In this book I started in April, 1918, but it was subject to change until October 1st.

Q. But substantially your valuation of this property is as of the spring of 1918?

A. Substantially, yes, sir, but I made a large number of changes during the season.

The Master: What Mr. O'Brien means is as to this particular plot, did you make any changes?

A. No, I didn't make any change in that block after I determined the unit of value. 7663

The Master: Your judgment was formed some time in April or May, 1918?

The Witness: Yes, sir.

Q. When you go into a new district, and you are handed over the field books of your predecessors, with the valuations they have, they influence your judgment?

A. I consider everything that has a bearing on values.

Q. Well, there would have to be some very radical change in a neighborhood, to cause you to upset the figures of your predecessor? 7664

A. Not necessarily, because I might look at the proposition from a different angle of view.

Q. What I mean is that one value assesses all the values in a neighborhood?

A. As far as land values are concerned, they are the same unit value on the basis of equality. I couldn't use half a dozen different bases of value in one block.

Q. What I mean to say is, there is an intimate relation between adjacent properties, properties in the same neighborhood, so far as assessments of land are concerned? 7665

A. Certainly, local conditions determine value.

Q. Given the field book of some new district to which you are assigned, you are influenced to a considerable extent by the units used in the previous years?

A. Not at all, because, when I took charge of this district three years previous, I changed prac-

7666 tically every lot and building value in this district. I did not accept my predecessor's values at all.

Q. You upset them?

A. I changed practically every one, because the district was going downward, and my opinion was that it was assessed too high, and I decreased almost everything in that section, both land and buildings.

Q. Have you ever gone very deeply into the housing situation in that section.

A. It was part of my duties in considering local conditions, certainly, because if tenement houses
7667 were half empty, it would affect values.

Q. You find that these properties are best handled by some owner of the same race as the tenants, don't you?

A. Oh, yes.

Q. They can get a far better result than some man who is perhaps alien to their race and their customs?

A. That is true?

Q. And some one not knowing their language and not knowing how to mingle with them, their traditions and ways, would have more difficulty than s mebody else in conducting and maintaining
7668 the property and getting the best results?

A. I think an outsider could not manage the property with the same efficiency that one of their own race could, because to a large extent these people belong to the poorer classes of Italians, and are not entirely conversant with our ways, and they have to be handled in a different manner entirely.

Q. You spoke something about earning capacity

and earning power of a piece of land. Did that lead you into a consideration of the actual earning power of this plot? 7669

A. Well, I compared it with the earning capacity of the adjoining lots, on which tenements had been erected, because that was the fundamental basis of the land value, what you can do with a lot.

The Master: I think you have exhausted that, Mr. O'Brien.

Mr. O'Brien: Your Honor, I will discontinue in a minute, if you will indulge me.

Q. What would you say, if you are able to say, was the earning power of this particular plot as of October 1, 1918? 7670

A. Well, that is expressed in my appraisal of the property on October 1st. That is what I would have been willing to pay for the property; that is my opinion of its value, based on my knowledge of the local conditions, and dependent upon the use to which it could be put, with an adequate and logical improvement.

Q. Well, do surrounding properties show a return of five or six per cent?

A. Well, I am not so intimately acquainted with the actual return of each parcel, but I think if I had one I could make it earn more than that. I have heard the stories of a good many owners of that section when they come into the department to speak about their valuations, I know what their expenses are and what their net returns are. 7671

The Master: I don't think I will permit any further cross-examination on that line, Mr. O'Brien. I think you have a pretty complete

7672 picture of the conditions and the operations of this witness' mind, and the method he followed in arriving at a conclusion.

Q. Lot No. 5 you said was used for storage purposes?

A. Yes, sir.

Q. Would you consider that if the stuff that was stored there were scrapped, and material not used, that the owners were getting the best results out of that plot?

Mr. Ransom: I object to the question as immaterial. That is not the issue here at all.

7673 It is purely a question of the value of land if wholly unimproved.

The Master: Objection sustained.

Mr. O'Brien: I am talking about unimproved land. I don't call scrap or junk or old iron improvements.

Mr. Ramson: You call anything junk.

The Master: Next question, Mr. O'Brien.

Mr. O'Brien: Your Honor, I want to say that this real estate proposition as I see it in a rate case works in several ways. We have situations presented where property is not used at all for gas making purposes, although

7674 owned by a gas company. We have some where it is just carried along and used for storage, and they don't get any uses out of it that warrant their holding it. Then we have other situations created where land may become so valuable that the company would be, under the rulings of the Court, expected to sell it and get cheaper land for gas making purposes.

The Court: I appreciate all these points, but 7675
the reason I sustain the objection is that this witness is under cross-examination by you as bearing upon the statement that in his opinion this land was worth a certain amount of money as of October 1, 1918. I am going to limit the cross-examination to that, and not permit you to go into his judgment of what the improvements might be, or any collateral matter not bearing upon the value of the land unimproved.

Mr. O'Brien: I have had that before me as the guiding star in the examination of these witnesses, that it is the value of the land, and 7676
I only want to consider those things that have an influence on the value as of October 1, 1918.

The Master: I think you have covered the ground very fully.

Q. As I understood you to say last night, Mr. Strobel, your units of value increased as you approached the Bowery?

A. Yes, because that is the local business avenue, and is worth more than Elizabeth Street. The store rentals warrant a higher land value on the Bowery.

Q. All of these stores along Elizabeth Street are stores that just live upon the immediate neighbor- 7677
hood?

A. Yes.

Q. And the dwellers in the tenements there?

A. They are mostly the local food supply stores dependent upon the trade of the people living in the adjoining tenements. There is considerable difference between the stores on Elizabeth Street and

7678 those on the Bowery. The Bowery caters to a larger trade.

Q. As you go east from the Bowery, then, do your units increase or decrease?

A. I did not appraise any property east of the Bowery, sir. The Bowery is the dividing line.

Q. Still you know of the values?

A. Oh, yes, I know of the adjoining values, certainly.

The Master: Any questions, Col. Hayward?

Mr. Hayward: Nothing.

The Master: The witness is excused.

7679 Mr. Ransom: I have here one witness who has one small parcel.

The Master: All right, call him. Does that wind up your Deputy Tax Commissioners?

Mr. Ransom: All we have been able to secure.

HERMAN SCHUMACHER, called as a witness in behalf of the Complainant, being duly sworn, testifies as follows:

DIRECT-EXAMINATION BY MR. RANSOM:

Q. What is your full name?

A. Herman Schumacher.

Q. Where do you live?

7680 A. 150 West 84th Street.

Q. Mr. Schumacher, what is your position with the City of New York?

A. Deputy Tax Commissioner.

Q. How long have you been such?

A. Since June, 1898, twenty-one years.

Q. Before that, what were you?

A. I was a clerk in the Department of Taxes and Assessments for five years.

Q. Have you ever bought and sold real estate? 7681

A. Yes, sir, I have.

Q. Have you acted as a broker in the buying and selling of real estate?

A. Yes, sir.

Q. Did you take a Civil Service examination to become a Deputy Tax Commissioner?

A. Yes, sir, I did.

The Master: I thought you said you were a Deputy Tax Commissioner twenty odd years.

The Witness: It was Civil Service then.

The Master: Was it?

The Witness: Yes, sir. 7682

The Master: What year?

The Witness: Why, I was appointed during the first year of the Van Wyck administration, in June, 1898. The position was then Civil Service.

Q. You took a competitive examination?

A. Yes, sir.

Q. As a result of that examination as to your qualifications, there was an eligible list?

A. Yes, sir.

Q. And you were one of the persons upon that eligible list as a result of the examination?

A. Yes, sir. 7683

Q. And you were appointed from the eligible list?

A. Yes, sir.

Q. And upon your appointment you took the usual oath of office?

A. Yes, sir.

The Master: Your position is now in the competitive classified service, is it?

The Witness: Yes, sir.

7684 Mr. O'Brien: You don't mean you as a clerk were asked to take an oath of office?

The Master: As Deputy Tax Commissioner.

Q. As a clerk did you take an oath of office, if you recall?

A. I don't remember that.

Q. What were your duties?

A. I don't believe I did.

Q. What were your duties during the time you were a clerk in the Tax Department?

A. Why, I did clerical work, and I assisted the Deputy who had charge of the District in which
7685 I was working.

Q. That is you assisted one of the deputies in the field?

A. Yes, sir.

Q. The year 1918, prior to October 1, were you assigned to any particular tax district as deputy commissioner, and if so what were the boundaries of the district?

A. I was assigned in the latter part of March, 1918, to District No. 13, in the Borough of Manhattan; the southerly boundary of that district is—well, the district starts at Hudson River and 137th Street and runs along the northerly side of 137th
7686 Street to Convent Avenue; the westerly side of Convent Avenue to 145th Street; northerly side of 145th Street to St. Nicholas Avenue; westerly side of St. Nicholas Avenue to 155th Street; northerly side of 155th Street to the Harlem River; along the Harlem River to old Spuyten Duyvil Creek, or what is the Manhattan boundary line, the boundary line between the Borough of Manhattan and Bronx; then it runs along that line over to the Hudson

River, and southerly along the Hudson River to 7687
137th Street, the place of beginning.

Q. Is that what they call the Washington Heights district?

A. Yes, sir.

Q. And that included Block No. 2108 on the Tax Map?

A. Yes, sir.

Q. And in the month of September or on or before October 1, 1918, did you make up and furnish to the Tax Board of the City of New York a detailed statement of all the property in the district, all the real property in the district to 7688
which you were assigned?

A. Yes, sir.

Q. And you showed that you had personally visited and examined each of the parcels of property?

A. Yes, sir.

The Master: Did you personally visit and examine them?

The Witness: Yes, sir.

Q. And you have so visited and examined each of the parcels?

A. Yes, sir.

Q. And did this report made by you to the Tax 7689
Board show as to each parcel separately assessed, the sum for which in your judgment that parcel would sell as of October 1, 1918, under ordinary circumstances, if wholly unimproved?

Mr. O'Brien: I make the objection which I made to the testimony of the witnesses Hogan, Quinn, Strobel and Mulhall.

The Master: Yes, and the same ruling and exception.

7690 Q. Did you show that?

A. Yes, sir, the record books to which I swore contained that information.

Q. You went before a Justice of the Supreme Court and made oath in the usual form attesting that statement or report?

A. Yes, sir.

Q. Calling your attention to the property Lot 23 of Block 2108, on the south side of 159th Street, between Edgecomb and St. Nicholas Avenue, what sum did, in your judgment, represent the sum for which this parcel of land would, under ordinary
7691 circumstances, sell as of October 1, 1918, if wholly unimproved?

Mr. O'Brien: I make the same objection, your Honor, and to the questions which will follow eliciting the valuations from the witness.

The Master: The same ruling and exception.

Mr. Chambers: These objections are made for all of the defendants?

The Master: Yes.

The Witness: The land value on Lot 23, Block 2108 I appraised at $21,000.

Mr. Chambers: $21,000.?

7692 The Witness: Yes, sir.

Q. That was the figure to which you made oath before a Justice of the Supreme Court on or before October 1, 1918, in making up the 1919 taxes?

A. Yes, sir.

Q. And that represented your judgment as to the sum for which that parcel would sell under ordinary circumstances if wholly unimproved?

A. Yes, sir.

CROSS-EXAMINATION BY MR. CHAMBERS: 7693

Q. Mr. Schumacher, you did not describe the size of the lot you valued. I am asking you now to describe the size of lot 23, block 2108, about which you have testified to the valuations.

A. It has a frontage of fifty feet.

Q. On West 159th street?

A. Yes, on the south side of West 159th street, it has a frontage of 50 feet?

Q. Yes.

A. And a depth of 100 feet; fifty by one hundred.

Q. And did you value that lot with the improve- 7694
ments thereon also?

A. Yes, sir.

Q. For that same year?

A. Yes, sir.

Q. How many years have you valued that lot, going back?

The Master: He said that was the only year. He was only assigned to that District in March, 1918.

The Witness: That was the first year.

Q. Who was your predecessor there?

A. Mr. H. G. Wilson.

Q. And you had operated in other districts— 7695
the Commission moved you around from district to district, I take it?

A. Yes, occasionally.

Q. You have operated in other districts?

A. Yes.

Q. They assign you first to one district and then to another?

A. Yes.

7696 Q. Had you had any familiarity with the property in this district before March, 1918?

A. I have not sold or bought anything in that district, no special familiarity.

Q. Who makes the assignments of you to these —to one district and then to another?

A. The Board of Tax Commissioners.

Q. The Board?

A. Yes, sir.

Q. Who is the Board composed of?

A. Seven commissioners, the president and six others.

7697 Q. Mr. Cantor is the president now?

A. Mr. Cantor is president now, yes, sir.

Q. Who are the other members?

A. Why, there is Mr. Williams, Mr. Murphy, Mr. O'Grady, Mr. Sinnott, Mr. Swazey and Mr. Payne.

Q. Do they issue an order sending you into a given district?

A. It is brought up in the meeting of the board, and a resolution is passed, making the assignments. They assign the deputies.

Q. Did they know when they assigned you to this district that you were not familiar with it, or

7698 hadn't any familiarity with the locality?

Mr. Ransom: I object to the question on the ground that he cannot testify to what they knew.

The Master: I will let him answer if he knows. He may know. He may have told them. Answer the question. Did they know you were not familiar with this section?

The Witness: I don't know what their reasons were.

Q. Did you appear before the Commissioners 7699
when the assignment was made?

A. Not before I was assigned.

Q. I take it that these Commissioners come and go as politics change; is that it?

A. Sometimes.

Q. That is, it is an ever-changing body, is it?

A. Mr. Purdy was there during several administrations.

Q. Is he there now?

A. He is not there now.

Q. The personnel of the Commission changes from time to time? 7700

A. Generally.

Q. It must have a good many times in your long experience?

A. It has, yes, sir.

Q. Did you go up and look at this lot 23?

A. I did, yes, sir.

Q. Do you remember about when you looked at it?

A. It was sometime between April and the first of September; I don't know when.

Q. In 1918?

A. It was probably in the summertime of 1918.

Q. Did you consult the reports made by this company, the Municipal Gas Company, to the State 7701
Tax Commission, concerning this particular piece of property, or a copy of the reply, do you remember?

A. Not in reference to the land.

Q. Well, in reference to the improvements?

A. I considered that.

Q. What else did you have before you? You had

7702 some notes, I take it, in your books here, your field book.

A. Why, the map—we have on the map all the land factors on the avenue and street fronts.

Q. What have you got on your map here that is of any importance or moment?

A. Why, here I have the value of the land on that street as being $10,500 a lot, or in other words, $429 a front foot.

Q. Do you mean somebody has put on that map that lots on that street are worth that amount of money a lot?

7703 A. We put them in here; we all do that in our districts.

Q. I mean who put that on?

A. This factory was there when I went into the district.

Q. In other words, somebody. Do you know who it was? Somebody has written those figures in the book?

A. It appears to be my predecessor's handwriting. I am not positive.

Q. So he has put on there what he thinks is the value per front foot of property on that street; is that it?

7704 A. Yes, sir.

Q. And did you follow that?

A. I saw no good reason for changing it.

Q. And so you adopted it?

A. I maintained the same figures, yes.

Q. Do you consider that is the full value of that piece of property?

A. In my judgment, yes, sir.

Q. All it would stand?

A. Yes, sir. 7705

Q. Do you know whether it was increased in the last few years for taxable purposes, or have you decreased it—has the Department?

A. I do not know. No, I do not know.

By the Master:

Q. Let me ask you a question in this connection that has occurred to me several times. Mr. Schumacher, when you are asked by Mr. Chambers whether you have appraised the value of this lot at, all that it would stand, you do not appraise the value of a particular lot, do you? You are required to appraise the value having in mind the 7706 equality among adjoining owners there, are you not?

A. Yes, sir.

Q. One particular lot right next to another particular lot might be worth a good deal more than that next lot, but in order to have an equal value you have to have a certain unit?

A. An equitable assessment, yes, sir.

Q. It has got to be equal along that line or unit, the same section, or whatever it may be?

A. Yes, we assess by comparison.

Q. In other words, you take six lots on 159th Street, the south side, and as you look at the six 7707 lots you reach the conclusion that a fair equitable value as to all of them would be $10,500 a lot, but one of those lots for some peculiar reason may be worth a little more to somebody. You do not change the value of that particular lot for that reason, do you?

A. No, sir.

The Master: What I wanted to make clear, Mr. Chambers—you may not have it in mind

7708 —is the rule as to equitable assessments. In other words, the minute you find an assessment to a lot in a series of lots on the same side of a block, having a larger assessment than others, at that minute you are making out an unequal value. It may be that that particular lot may be worth more separated from the other lots, but the tax assessment under the law as I understand it must make an equitable assessment and take the same ratio for those lots, and not hit one lot to the disadvantage of others.

7709 Mr. Chambers: I have it in mind that the complainant is submitting this witness as an expert on the full value of this piece of property.

Mr. Ransom: No.

Mr. Chambers: Yes, you are.

Mr. O'Brien: Yes, you are.

Mr. Ransom: We are submitting this witness as essentially an admission on the part of the public authorities as to what they think property is worth.

Mr. Chambers: I think you are going to slip up.

7710 Mr. O'Brien: We may as well have that clear, your Honor. He is running out on his original stand.

The Master: Do not let us argue it now. It will not make any difference in the cross-examination of this witness. These witnesses are not in the employ of the Consolidated Gas Company, so let us let them go as quickly as we can and not take time with discussions of law.

Q. In any event, Mr. Schumacher, you placed 7711
what you considered was the full value upon this particular piece of property, lot 23?

A. In my judgment, yes, sir.

Q. You swore to that; you took oath that it was its full value?

A. What it would sell for under ordinary circumstances.

Q. What it would sell for?

A. Under ordinary circumstances.

Q. Regardless of whether it was for tax purposes, or not, it was its full value, in your judgment?

A. Yes, sir. 7712

Q. After all of your years of experience?

A. Yes, sir.

Q. You swore to this book, did you, about the last week in September?

A. Yes, sir.

Q. Before a justice of the Supreme Court?

A. Yes, sir.

Q. I suppose before any justice of the Supreme Court who is available?

A. A justice of the Supreme Court generally comes to the office and goes through the office and takes our oaths.

Q. He is very accommodating. 7713

A. Yes, sir.

Q. After you take that oath what next happens?

A. The books are open to the public on the first day of October.

Q. For grievances and complaints?

A. Open to the public for inspection.

Q. For inspection?

A. Yes, sir.

7714 Q. They remain open a certain length of time, do they?

A. Yes, sir, until the 15th of November.

The Master: Well, they remain open after that, for some time, do they not?

The Witness: Yes.

The Master: The time to file complaints is limited to the 15th of November, but the books are opened for some time.

The Witness: Yes, sir.

Q. I take it that oftentimes complaints or applications for reduction of assessments are filed
7715 against valuations that you make on various pieces of property?

A. Yes, sir.

Q. I mean you do not escape that, do you?

A. No, sir.

Q. They attack your valuation?

A. Yes, sir.

Q. I suppose a good many do that?

A. Yes, sir.

Q. Are some of your valuations reduced by the Commission?

A. Some are, yes, sir.

Q. And are some of your valuations reduced by
7716 the courts in *certiorari* proceedings, or have you a 100 per cent batting record?

A. There may have been some. I cannot recall any special instances.

Q. Do you recall whether there was an attack made on the valuation of this particular piece by you—this particular piece of property—before the Commission?

The Master: As to the land.

The Witness: Oh, as to the land?

The Master: Yes.

A. Well, the application is put in on the valuation as a whole. 7717

Q. You mean this company files an application every year regularly for the reduction of assessments?

A. Not every year, no, sir.

Q. On all their land? Well, as against this assessment, did they?

A. They do file applications on a good many parcels.

Q. They always want it reduced, I suppose?

Mr. Ransom: You know perfectly well——

Mr. Chambers: Is that so?

Mr. Ransom: There are no applications as to land. 7718

Mr. Chambers: I am trying to find out, Judge Ransom. How can I find out except by your witness.

Mr. Ransom: Mr. O'Brien has got the records here.

Mr. Chambers: You submit him as competent.

Mr. O'Brien: Judge Ransom assumes the city is a party defendant in this case, as they ought to be.

Mr. Ransom: You said you would have these records here. Now I take it you have them here. 7719

Mr. O'Brien: Who said that, and when?

Mr. Chambers: You are conscious of the fact that this proceeding is taken by the City of New York who is not a party here, do you not?

Q. Who are you employed by?

7720 A. By the City.

Q. By the City of New York?

A. By the City of New York.

Q. You are not in the employ of the State, are you?

A. No, sir.

Q. Nor in the employ of the Public Service Commission, are you?

A. No, sir.

Q. Nor in the employ of the District Attorney, are you?

Mr. Chambers: That is a fact, who he is em-

7721 ployed by.

The Master: Let me ask you a question. Do you understand the municipality is entirely separate and distinct from the State, or do you understand that the municipality is a subdivision of the State?

Mr. Chambers: Certainly, so far as binding the State on any acts of officers.

The Master: Are there no instances in which the municipality can bind the State?

Mr. Chambers: I won't go so far as to say that.

The Master: Or in which the State can dele-

7722 gate power to the municipality?

Mr. Chambers: I will not go so far as to say that.

The Master: Does not the State reserve the right to supervise and revise acts done by the municipality?

Mr. Chambers: In some things, yes.

The Master: Isn't it quite possible that the courts may reach the conclusion that even

franchise agreements are subject to revision by the State? 7723

Mr. Chambers: It may be.

The Master: On the question of rates?

Mr. Chambers: But the courts won't hold in a rate case that we are bound by any act performed by the city, who is not a party.

Q. Mr. Schumacher, after the books are closed, then the Commissioners take up the question whether they will reduce your valuation or not, do they?

A. Why, they have the final action on the application filed by the property owner.

Q. Do they call you in and take it up with you if it is a piece of property that you valued? 7724

A. Why, I have to make my report on the back of the application.

Q. That is, they submit the application to you, and you answer it with a report?

A. Yes, sir.

Q. When you visited this piece of property, lot No. 23, do you remember what you saw upon it?

A. Yes, sir.

Q. What is on it?

A. There is a four story brick building, 50 by 95.

Q. An old building, is it? 7725

A. Comparatively old.

Q. Used for what?

A. It is used as a meter shop.

Q. On your books who was this lot assessed to?

A. Consolidated Gas Company.

Q. Did you know of any sales of lots around in that neighborhood to your knowledge?

A. Not at that time.

7726 Q. You had some record, did you, handed to you, of sales of property in that locality?

A. Why, the field book is supposed to contain the sales of all property, all sales that take place in the district of the property comprised in that book.

Q. Have you the field book with you, with a list of those sales in it?

A. The largest part of this section is improved.

Q. Have you the field book with the sales?

A. I have a field book here.

Q. What sales have you of property in that locality in your field book?

7727 A. I haven't any sales on lots that have taken place in the last two years.

Q. You have not?

A. I have a recent sale a few blocks away that I can give you.

Q. Where is that?

A. That is in block 2119, lots 34 and 35.

Q. Where is that?

The Master: Mr. Chambers has not limited the question to vacant land, Mr. Schumacher. He wants to know any sales of land, or land and buildings; improved property, if you know of any.

7728 Q. In that same block?

A. Not in that block, I haven't any.

Q. There are no sales on these three sections of block 2108, that you have, in the last few years?

A. Not the last few years.

Q. Where is that block that you spoke of?

A. This sale I have is on 161st street, No. 504 and 506 West 161st street.

Q. That is quite a distance away?

A. That is two blocks north, and it is west of 7729
Amsterdam avenue.

Q. Have you the dimensions of those sales? What is that sale you have there in 1914? Where is that?

A. Those are not sales; those are valuations.

Q. Now, the first sale you have there?

A. The only one I have.

Q. Is 504 and 506 West 161st street?

A. Yes, sir.

Q. Give me that; let me see where it is, first.

The Master: What year was that?

The Witness: That was sold in May, 1919. The Gas Company's property is on the south 7730
side of 159th street, between Edgecomb Road and St. Nicholas avenue. The sale to which I refer is on the south side of 161st street, west of Amsterdam avenue.

Q. In a much more desirable territory, being nearer Broadway?

A. A less desirable street.

Q. A less desirable street than where this Gas Company property is?

A. Yes, sir.

Q. Well, it is nearer Broadway?

A. 159th street, between St. Nicholas Avenue and Edgecomb Road, a wider street, and it is near 7731
Highbridge Park, overlooking the valley to the east, and the Speedway.

Q. Where is the Speedway there?

A. Right here (indicating).

By Mr. Ransom:

Q. Along the river?

A. Yes, sir, and we have Highbridge Park here.

7732 By Mr. Chambers:

Q. How much of a piece of property was that that was sold?

A. 50 by 99 feet 11 inches.

Q. What was on it, do you know?

The Master: Those were vacant lots, were they not?

The Witness: No, sir, they had frame buildings on them.

Q. Block 2119, Lots 34 and 35, two 25 foot lots by 99 feet 11 inches deep?

A. Yes, sir.

7733 Q. What did they sell for?

A. $21,000.

Q. With the buildings and everything on them?

A. With the buildings.

The Master: Well, the buildings didn't amount to anything, did they?

The Witness: I will give you the assessed value.

The Master: Don't give us that. Do you want it, Mr. Chambers?

Mr. Chambers: Yes.

Q. What is the assessed value of that?

7734 A. The land value is assessed at $18,000., and the building at $1,500., total $19,500. It sold for $21,000.

Q. In 1919?

A. Yes, sir.

Q. When was your assessment, for what year?

A. My assessment was made—the books were open on the 1st of October, 1918. At that time I did not have this sale.

Q. You will probably raise that up to that selling price now, won't you? 7735

The Master: You need not answer that. Not necessarily. The man may have paid a thousand dollars more than it is worth.

Q. Well, that conforms pretty well with the assessment. It sold for a little bit more. Your assessment was made a year before?

A. Prior to the sale, yes, sir.

Q. How do you know it sold for that?

A. The record filed in the Register's office ——

Q. You mean that is the consideration expressed in the deed? 7736

A. That is what was stated in the *Record and Guide*, which is a copy of the deed recorded in the Register's office, the consideration recorded in the Register's office.

Q. Some of these smart fellows in the City of New York, these land sharks, put in more consideration than they actually receive sometimes, don't they?

A. I don't believe they are allowed to do that by law. They are supposed to record the mortgage, and put the equity in revenue stamps.

Q. Suppose there is no mortgage, is there any objection to their adding a few thousand dollars in the deed? 7737

The Master: I will not let the witness answer matters of law of that kind. Do you know whether it is the practice to overstate the valuations to mislead future buyers?

The Witness: It is occasionally done, but very seldom.

7738 Q. How about many times a nominal consideration being expressed in the deed?

A. Well, under the law now, if there is a certain mortgage on the property they have to put on certain revenue stamps.

Q. Was there a mortgage on this property?

A. Yes, sir, there was a mortgage on it.

Q. That would only tell what the amount of the mortgage was, those stamps.

The Master: What the witness is trying to say is this, that the deed must carry on it the amount of revenue stamps representing the
7739 purchase price, or, if there is a mortgage on it, the amount of the equity over the mortgage.

The Witness: That is right.

Q. That is the only piece of property that you have a sale of in this immediate locality in the last several years?

A. That is the only one I can recall.

Q. In the last how many years, six or seven years back?

A. (Examining books) I find what I was looking for. I was looking for the sale of a six-story elevator house.

7740 Q. Where was that located?

A. One house is on the northeast corner of Amsterdam avenue and 159th street; the other house is on the south—northwest corner of St. Nicholas avenue and 159th street.

Q. That is how far away from this property, this particular lot, are these two particular pieces of property?

A. Not very far away.

Q. And when were those sales? 7741

A. April, 1919.

Q. April, 1919?

A. Yes, sir.

Q. This year?

A. Yes, sir.

Q. What did they sell for?

A. These two properties sold for $130,000, according to the record.

Q. Each?

A. Together.

Q. And what was the size of the lots, and give their numbers. 7742

A. The size of lot 1, block 2109, size of lot 1, 50 by 68; size of lot 16 in the same block, 50 feet 10⅜ inches on St. Nicholas avenue, and 67 feet 9⅞ inches on West 159th street.

Q. Those two together sold for the amount you gave?

A. $130,000.

Q. And they had apartment houses?

A. Six story elevator houses.

Q. Those are modern, up-to-date apartment houses?

A. Yes, sir.

Q. With the elevator? 7743

A. Yes, sir.

Q. And I suppose other, janitor's service, and all the convenience of up-to-date apartment houses?

A. All modern improvements.

Q. How did you value this lot 23, by front foot, so much a front foot?

A. Yes, sir, I figured it at $420 a front foot, or in other words, $10,500 a lot, 25 by 100.

7744 Q. Did you allow anything for plottage?

A. I did not add any plottage there, no sir.

CROSS-EXAMINATION BY MR. O'BRIEN:

Q. This is a residential section, isn't it?

A. Yes, sir.

Q. Do you know where the Company's office is on Amsterdam avenue?

A. No, sir.

Q. It is in your territory, isn't it?

A. Below 155th street, yes, sir, on the east side of Amsterdam avenue, south of 155th street.

Q. Yes; is that in your territory?

7745 A. Yes, sir.

Q. Do you know what rent the company is paying there?

Mr. Ransom: I object to the question as wholly immaterial.

The Master: I will allow it.

Mr. Ransom: I did not interrogate him at all as to that property.

Mr. O'Brien: Why, I am going into this witness' knowledge of real estate values.

The Master: Answer the question.

Mr. Ransom: Exception.

The Witness: No, sir, I do not.

7746 Q. Do you know who owns the property?

A. I know it does not belong to the Gas Company. I do not know who owns it, no, sir.

Q. They pay rent there?

A. They pay rent, yes.

The Master: How do you know?

The Witness: Why, I think the property belongs to——

The Master: How do you know they pay rent? 7747

The Witness: Well, they are a tenant there.

The Master: How do you know they don't get it for nothing? You don't know, do you?

The Witness: No, sir, I do not.

Mr. O'Brien: That is a fair deduction, your Honor.

The Master: You and I can deduce things, but I don't want the witness to make any deductions.

Mr. O'Brien: Well, he has drawn deductions for these assessments all right.

The Master: Yes, he has given his opinion. 7748

Mr. O'Brien: Hearsay evidence and hearsay information.

The Master: Oh yes.

Q. At any rate, do you know the character of the building there that they rent?

The Master: You need not answer that. We don't care about that. Get down to some questions testing this witness' judgment as to value.

Mr. O'Brien: That isn't so far away, your Honor. It is just south of 155th street, and our contention that this is another instance of the useless payment of money for property—— 7749

The Master: We won't get anywhere asking this witness questions on that line.

Q. Do you know what they do in this building on lot 23?

A. I understand it is used as a meter shop.

Q. Repair of meters?

A. Storage of meters and testing of meters.

Q. Have you ever had the territory, as a deputy

7750 tax assessor, covering 111th street and First Avenue?

A. No, sir, I never had that.

Q. You have never seen the big building over there used for repairing and testing meters?

A. No, sir.

Q. St. Nicholas Avenue is one of the important residential avenues of Washington Heights, is it not?

A. It is a residential district.

Q. The apartment houses are all modern construction?

7751 A. Yes, sir.

Q. Some of them eight and ten stories high?

A. Mostly five and six story buildings; some of them private houses.

Q. Well, you know one or two that tower above that height there, right near St. Nicholas Avenue, to a height of ten or twelve stories?

A. I don't recall any on St. Nicholas Avenue in that immediate neighborhood.

Q. I mean adjacent to it?

A. In that immediate neighborhood.

Q. Don't you know the apartment house at 159th Street over the brow of the hill, just east of St.

7752 Nicholas Avenue?

A. 159th Street?

Q. Yes.

A. East of St. Nicholas Avenue. I know there is an apartment house on the southwest corner of 160th Street and Edgecombe Road.

Q. What is the avenue running north and south immediately east of St. Nicholas Avenue, St. Nicholas Terrace?

A. Edgecombe Road. 7753

Q. Does that run north of 155th Street?

A. Yes, sir, it starts at 155th Street; Edgecombe Road.

Q. Just locate on this map which you have before you the property of the complainant, Lot 23?

A. Right in here (indicating).

Q. What is on Lot 21, which is the southeast corner of St. Nicholas Avenue and 159th Street?

A. Five story apartment house.

Q. What is on Lot 18?

The Master: Do you have in mind, Mr. O'Brien, the fact that they ought not to have 7754
a piece of property worth, in the opinion of this witness, $10,500 a lot for this use, in that neighborhood?

Mr. O'Brien: Absolutely. I want to explain it. You have asked me a question.

The Master: I have your point.

Mr. O'Brien: You have not got my point because I have not given it to you at all, your Honor. We take the position that the holding of large properties of the complainant company and the uses and non-uses that they indulge in are wanton waste. That is wanton.

The Master: I get that point. 7755

Mr. O'Brien: Here is a residential section——

The Master: Wait a minute. I have got your point, but what I wanted to ask you was whether you do not think you have brought out from this witness the facts upon which you base your argument sufficiently?

Mr. O'Brien: No, not for appeal.

7756 The Master: You have got the character of the neighborhood, five and six story modern apartment houses.

Mr. O'Brien: Well, they are even more than that. It is not quite complete, your Honor, but I do not intend to repeat much. This neighborhood here on St. Nicholas Avenue is the choicest piece on Washington Heights.

The Master: It is not the choicest, but it is very good property. Can you not bring that out without asking about every single lot?

Mr. O'Brien: I would like to have his de-
7757 scription. That bird's eye view for the higher courts does not quite meet my idea, for a case on appeal.

The Master: Go ahead; I want to give you every opportunity.

Q. Lot 18 is what, Mr. Schumacher?

A. Two five story apartment houses.

Q. Lot 17?

A. A five story apartment.

Q. Lot 16?

A. A six story apartment.

Q. Lot 15?

A. 15 is not in existence. That is crossed out.

7758 Q. What takes the place of Lots 15, 13, 14 and 11?

A. 14 and 15 are included in Lot 33.

Q. Lot 33 is improved in what way?

A. A six story elevator.

The Master: That is an apartment house, you mean?

The Witness: Yes, sir.

The Master: A six story apartment house?

The Witness: Yes, sir.

The Master: That whole block, generally 7759
speaking——

Mr. O'Brien: Is high class elevator apartments.

The Witness: Yes, sir.

The Master: Is improved with modern apartment houses.

Q. And the same would be said——

A. The corner to which I referred before, the southwest corner of Edgecombe Road and 160th Street, is improved with a thirteen story elevator apartment. That is the house you are referring to.

Q. What is that street? A. Southwest corner of 7760
Edgecombe Road and 160th Street.

Q. Yes, that is thirteen stories high?

A. Thirteen story elevator apartment.

Q. Recently built?

By the Master:

Q. In other words, so I can get Mr. O'Brien's point clearly on the record, a meter shop on that block is out of line with the trend of improvement in that block, isn't it?

A. Yes, sir.

Q. It is a block devoted—and that whole section immediately north and south and west of St. Nicholas Avenue and on St. Nicholas Avenue and Edge- 7761
combe Road—to the better class of modern apartment houses, running from five to six and as high as thirteen stories on 160th Street—to the better class of private houses?

A. Yes, sir.

Q. In which the people who own them live in most instances or many instances; is that correct?

A. The private houses?

7762 Q. Yes.

A. Yes.

Q. Are there any other meter shops or stables or factories or business buildings or matters of that kind in this neighborhood?

A. West of Amsterdam Avenue?

Q. No. I am talking about the section along St. Nicholas Avenue, Edgecombe Road, and along 159th, 160th, down to 155th, 156th and 157th Streets.

A. No, sir. It is a residential district.

The Master: Haven't you got that pretty complete, Mr. O'Brien?

7763 Mr. O'Brien: West of Edgecombe Avenue is a slope of the hill.

The Master: A different neighborhood?

The Witness: A different neighborhood.

The Master: It is like so many sections of New York that you and I are familiar with. They change within a few blocks from one character to another. We are trying to place on the record that St. Nicholas Avenue, Edgecombe Road, around 159th Street, is improved with rather better and higher class residences.

By Mr. O'Brien:

7764 Q. Mr. Schumacher, do you know what the company paid for this property?

A. No, sir; I do not.

Q. Do you know when they purchased it?

A. No, sir; I do not.

Q. Did you in assessing its value consider the use to which it was put by the complainant company?

A. I assessed it in proportion to all the surrounding property.

By the Master: 7765

Q. You have not answered Mr. O'Brien's question. Did you add to or subtract from any figure, giving an approximate value to this lot—anything because the gas company used it for a meter shop?

A. No, sir, I did not.

Q. Did that make any difference in your valuation of the land, as land?

A. No, sir, it did not.

Q. In other words, the unit you gave to this lot is the same as the units alongside of it?

A. On the opposite side of the street.

Q. And alongside of it? 7766

A. Yes.

By Mr. O'Brien:

Q. Immediately to the east of lot 23, in block 2108, are a number of lots which face upon Edgecombe Road, Mr. Schumacher?

A. Yes, sir.

Q. And Edgecombe Road is on the brow of this eminence called the Heights?

A. Yes, sir.

Q. Overlooking the valley below?

A. Yes, sir.

Q. Are these lots 26, 27, 28, 29, 30, 31, 32 and 33, all improved with the same types of houses, high 7767 class elevator apartments?

A. Lot 26 is improved with a five-story apartment house.

By the Master:

Q. How about 27?

A. 27, 28 and 29 are vacant.

Q. How about 33?

A. 33 is improved with a six story elevator.

7768 Q. 35?

A. 35 has two five story apartments.

Q. 39?

A. 39 is vacant.

By Mr. O'Brien:

Q. Mr. Schumacher, did you go into the question as to the uses to which this land could be put under our present building laws and zoning laws and tenement house law—this lot 50 by 100?

A. Yes, sir; that lot can be used to build a five story apartment house 50 x 88.

Q. You know the requirements of the tenement
7769 house law?

A. They build houses 50 by 88 on 50 foot lots.

Q. Not many, Mr. Schumacher, under the present law, do they?

A. Well, they are building them of larger size but they can build a house 50 by 88.

Q. The exemptions of the tenement house law on an interior lot, are such, are they not, as make a 50 by 100 interior plot not as desirable?

The Master: The witness has testified to the contrary. He says they are building 50 by 88 foot buildings on lots 50 by 100.

The Witness: Yes, sir.

7770 The Master: If that is so, then they are desirable. Why ask those questions?

Q. You cannot recall now where they are building any of that type on 50 foot plots?

A. They are building them up in the Dyckman section.

Q. That is a walk-up section, is it not?

A. Both walk-up and elevator.

Q. Do not the walk-up apartments dominate the 7771
Dyckman tract?

A. There are more walk-ups than elevators there.

The Master: Up to this time?

The Witness: Up to this time, yes.

The Master: What is the tendency now?

The Witness: Why, the tendency ought to be for elevators. They have good transit facilities now.

Q. Mr. Schumacher, is it not a fact that the later day improvements on Washington Heights, with elevator apartments, have in almost every instance been on plots 100 by 100 or larger?

The Master: That cannot be so, Mr. O'Brien. 7772

Mr. O'Brien: I know it is so, your Honor.

The Master: These very houses he has been talking about——

Mr. O'Brien: I happen to know that it is so.

The Master: Do not let us get at these things.

Mr. O'Brien: I thought the witness would know it. It is so axiomatic that you could not go on a 50 foot plot and get your money out of it.

Mr. Ransom: The witness says you can.

Mr. O'Brien: I am talking about houses built 7773
under the Tenement House Law.

By the Master:

Q. I am taking interior lots now, Mr. Schumacher. Lot 27 you said had what?

A. 27, 28 and 29 are vacant.

Q. 33 is a large lot?

A. That is a large piece, running through from St. Nicholas Avenue to Edgecombe Road.

7774 Q. Are these lots over here (indicating) improved—16 and 17?

A. Five-story apartments.

Q. That is on Lot 16?

A. Lot 16 has a six-story.

Q. That is only 25 feet wide, is it not?

A. A six-story walk-up.

Q. Do you remember when that was built?

A. No, sir; I do not.

Q. Lot 17, do you remember when that was built?

A. No, sir; that is a five story.

7775 The Master: Well, we cannot get it from him. The witness' testimony is that they are building houses 50 by 88 on Lots 50 by 100.

By Mr. O'Brien:

Q. I will ask you where, if you recall, have they put up in later years apartment houses of the elevator type on lots 50 by 100?

The Master: Later years means when, Mr. O'Brien?

Mr. O'Brien: In the last decade.

A. I said walk-up. Not an elevator 50 by 88. They build walk-ups 50 by 88. They generally build the elevator houses on a larger plot.

7776 Q. Most of the apartment houses along St. Nicholas Avenue and in the cross streets here are elevator apartments, are they not?

A. No, I would not say that. There are just as many walk-ups as there are elevators.

The Master: The better class of walk-ups, though?

The Witness: Yes, sir.

Q. The newer ones are elevator apartments?

A. The newer ones; yes, sir. 7777

Q. And do you know how many apartments there are in that thirteen story building there at 160th Street and Edgecombe Road?

A. No, sir; I do not.

Q. What is the size of the plot on which it is built?

A. The lot has a frontage on Edgecombe Road of 102 feet 7 inches.

By the Master:

Q. What is it on 160th Street?

A. The depth on 160th Street is 150 feet 5 inches. 7778

Q. And the southerly line?

A. 127 feet 6 inches.

Q. And the westerly line?

A. 100 feet.

Q. It is an irregular lot?

A. An irregular lot.

By Mr. O'Brien:

Q. Will you take the elevator apartments within a radius of a block of the complainant's property and tell us the size of the plots on which they are built?

The Master: No, I am not going to spend any time on that. I think you have covered 7779 that. I will not allow the witness to answer Mr. O'Brien's last question, because I think the subject has been covered.

Q. How wide a street is 159th Street?

A. 159th Street between St. Nicholas Avenue and Edgecombe Road is 80 feet wide.

Q. 80 feet?

A. Yes, sir.

7780 Q. And is it in a one-time district or a one and a half time district under the zoning resolutions of the city?

A. I would imagine it is one and a half.

The Master: You mean that they can carry the building up 120 feet, that being the width of the street and half again as high, is that what you mean, Mr. O'Brien?

Mr. O'Brien: If it is a one and a half times district.

The Master: Do you recall offhand whether it is a one and a half time or a one time district?

7784 The Witness: I do not, it may be one and a quarter.

Q. How wide is Edgecombe Road?

A. That appears to be 80 feet or more.

Q. There is a park on the east side of it, isn't there?

A. A park on the east side of Edgecombe Road, yes, sir.

The Master: Is that High Bridge Park?

The Witness: High Bridge Park, yes, sir.

Q. And under the laws as they have been interpreting them so far as the tenement house law 7782 goes, they can go up to a greater height than one and a half times the width of a street, that is, Edgecombe Road?

The Master: You need not answer that question, I will not allow that. It is getting into a discussion that is not at all useful.

Mr. O'Brien: I will tell you how useful it is, your Honor. You can have this on or off the record, according as counsel would have it.

We have a situation here where the application of the ordinary unit value to that little plot owned by the complainant company is entirely unreasonable, because under the tenement house regulations you cannot improve it with a proper tenement house 50 by 100. 7783

The Master: That is your judgment.

Mr. O'Brien: Secondly, under the zoning resolutions and the tenement house laws together they may go ahead and improve those two corners there with apartment houses and shut off the light, and make such a plot as this one absolutely useless for improvement by tenement houses. 7784

The Master: I think you have covered the situation so you can argue that on the facts as they are now in the record. That is why I will not permit any further questions.

Q. Do you know within a radius of five blocks of the complainant's property of any walk-up tenements, so-called, having been erected in the last ten years?

A. There is a five story apartment house at No. 515 West 156th Street, just west of Amsterdam Avenue.

Q. Oh, west of Amsterdam? 7785

A. West of Amsterdam.

Mr. Ransom: That is within five blocks.

The Witness: That was erected during the year 1916.

Q. Overlooking the graveyard?

A. This is on the north side of 156th Street west of Amsterdam.

7786 Q. Yes, overlooking the graveyard. You know where the cemetery is?

A. On 155th Street. This is on the north side of 156th Street.

The Master: So you would have to look through a block of buildings to look over the graveyard, and the graveyard to which Mr. O'Brien refers is Trinity Cemetery.

Mr. O'Brien: That would not make it any less a graveyard.

The Master: On both sides of Broadway.

The Witness: Yes, sir.

7787 The Master: In which burials have not taken place for many years, have they?

The Witness: Very rarely.

Mr. O'Brien: I will have to go into that, your dear friend, Billy Stallings is buried there.

The Master: Very rarely. It is an attractive neighborhood around that graveyard, isn't it?

The Witness: It is like a park.

The Master: When you try to get stuff on the record around New York where I have lived for forty-six years—the fact remains, as

7788 the witness points out, that the property on 156th Street, about which he has testified, does not overlook the graveyard. That is a block away.

Mr. O'Brien: I will ask the witness a few questions.

Q. Take the block on 155th Street from Amsterdam Avenue west, and tell us what there is on the

north side. In the first place, you get a vacant lot, your Honor? 7789

The Master: I take it from what Mr. O'Brien said a minute ago that the section west of Amsterdam Avenue is entirely different from the section at Edgecombe Road and 159th Street, is it?

A. Yes, sir.

The Master: I will not permit the question.

Mr. O'Brien: This bears on the question of overlooking the graveyard.

The Master: No, you are too far away from the question about which we are having the discussion. 7790

Mr. O'Brien: I want to justify my question.

The Master: I will not allow it, Mr. O'Brien, for this general reason, that you have fully and exhaustively covered the point that you have been trying to develop, and I don't think further questions are necessary.

Mr. O'Brien: I want to say to your Honor, that the structures on the north side of 155th street west of Amsterdam avenue——

Mr. Ransom: He wants to testify now, when you won't let the witness testify.

Mr. O'Brien: I have asked the question and the Master has shut him off. 7791

The Master: I can stop a question——

Mr. Ransom: But you can't stop him.

The Master: I can't stop a statement.

Mr. O'Brien: Your Honor can make such ruling as you see fit, and permit me to ask the question.

The Master: I have ruled that I will not

7792 permit you to ask a question. I say that you have covered the subject exhaustively, and I will not permit any further questions on that line.

Mr. O'Brien: Will you permit one question that will cover the whole block?

The Master: Yes.

Q. Mr. Schumacher, is it not a fact that on the north side of 155th street, from Amsterdam avenue westward, there are some vacant plots and some low buildings?

Mr. Ransom: I object to the question as im-
7793 material here, relating to an area which the witness has testified is of a very different character, and about which no basis has been laid.

The Master: I will overrule that and allow the witness to answer the question and end the discussion.

Mr. Ransom: It will not end it.

The Master: Yes, it will end it. What is on the north side of 155th street between Amsterdam avenue and Broadway?

The Witness: There is a one-story building on lot 50, the church building, one-story church building; and lot 52 is vacant; lot 54 is an
7794 old two-story frame building; lot 56 is vacant; lot 58 is a one-story church.

Q. Well, at any rate, Mr. Schumacher, the fact——

Mr. Ransom: Let him finish.

Mr. O'Brien: Do you want some more of that, Judge?

Mr. Ransom: I want the fact.

Mr. O'Brien: Well, that pleases me.

Mr. Ransom: In view of the Master's ruling. 7795

The Witness: Lot 15 is a one-story frame building, Young Men's Christian Association; lot 66 has a five story 50 by 88 apartment house; lot 68 five stories 50 by 88.

Q. You are approaching Broadway now?

A. Yes, sir. Lot 70 five stories single flat, 25 feet front; coming to the corner of Broadway, lot No. 1, Sisters of the Annunciation, four story building, brick building.

Q. So that the rear of the buildings on 156th street overlook the graveyard?

The Master: The question is not allowed. 7796

The witness is directed not to answer.

Q. I will ask the witness now, are there any other instances now that you know of where walk-ups were erected within a radius of five blocks of the complainant's property in the last ten years?

A. That is the only one I can recall, and I take that from the tax books, because I have only been in the district a little over a year. I can tell that by the field book.

Q. Were you in property contiguous to Washington Heights before you came to this district; were you in sections, I mean?

A. No, sir; I was in the Borough of the Bronx. 7797

Q. And had you been in the Bronx a number of years?

A. Some years, yes, sir.

Q. Handling in the tenement house section of the Bronx, or the factory sections?

A. I had apartment houses and one or two-family houses.

7798 Q. Did you succeed Mr. Kingsley on the Heights?

A. I succeeded Mr. Wilson.

Q. How many parcels have you got in your district?

A. About 6500.

Q. 6500?

A. Yes, sir.

Q. And you have the same period as has been testified to by the other deputies for your field work, a period of about five and one-half months?

A. Between the first of April and about the
7799 middle of September.

Q. The middle of September, taking out your vacation period?

A. Yes, sir.

Q. And until recently the real estate market in this section has been dormant for a number of years?

A. Yes, sir.

Q. Seven or eight years, would you say?

A. Oh, since about 1907.

Q. Immediately east of Edgecombe Road there aren't any apartment houses for a mile, are there?

A. East of Edgecombe Road?

7800 Q. Yes.

A. Is the park, High Bridge Park.

Q. What is that?

A. High Bridge Park.

Q. There is the park and the hillside down there, the Polo Grounds and the railroad?

A. Yes, sir.

Q. And the Viaduct?

A. Yes, sir.

Q. And the valley that intervenes there running 7801
over towards University Heights or Ogden Avenue is a mile—I mean would you say three quarters of a mile in width?

A. That territory is all down in the valley, yes.

Q. Do you know whether the complainant has other property on Washington Heights?

The Master: The question is not allowed.

Mr. O'Brien: I will ask counsel for the complainant now if they intend to include any property——

The Master: No, I want you to finish with this witness before you make any inquiry of 7802
counsel. It is not fair to the witness to sit here and listen to this discussion.

Q. You first went then to the district a year ago last January, did you?

The Master: The question is not allowed, as it has already been answered.

Mr. O'Brien: I want to find when he actually took up his work, your Honor.

The Master: You can ask him.

Q. When did you actually first take up your work as a deputy tax commissioner in this district?

A. April 1st, 1918.

Q. Prior to that time you had not dealt or 7803
handled any real estate of any kind in that neighborhood?

The Master: He has already answered that. The question is not allowed.

Mr. O'Brien: I think the witness stated he did buy and sell some real estate.

The Master: The witness stated expressly that he did not sell or trade in any property in this section.

7804 Q. When you said that, you included all of the Heights, did you?

A. Yes, sir.

Q. Washington Heights?

A. Yes, sir.

Q. Running from 125th Street north to 140th?

The Master: Yes, to Spuyten Duyvil Creek, he said, to the Ship Canal.

Q. You haven't bought or sold any west of the Bronx?

The Master: You need not answer that question. Not allowed.

7805 Mr. O'Brien: The stenographer will note my exception to all of these rulings, your Honor.

The Master: Certainly. Colonel Hayward or Major Clark, have you any questions?

Mr. Hayward: No.

Mr. Clark: No.

REDIRECT-EXAMINATION BY MR. RANSOM:

Q. Have you in court the original or a copy of any application by the company regarding your 1919 assessment of this property?

A. No, sir, I have not.

Mr. Ransom: Have you that, Mr. O'Brien?

7806 Mr. O'Brien: I have a number of applications, but I am going to require that counsel produce them under subpœna.

Mr. Ransom: On page 2420, folio 7258 of the record, when Mr. Mulhall was on the stand last week, Mr. O'Brien succeeded in having Mr. Mulhall's copy produced by the Tax Department kept out of the record upon Mr. O'Brien's statement that "Your Honor, I will have all

of those in court next Wednesday any way", 7807
and the Master said, "Upon the statement of counsel for the District Attorney that he will have in court the original papers referred to, the objection of Mr. O'Brien to the copy will be sustained." Now I call upon counsel to produce the originals of any applications made by the company regarding this and all other parcels of land concerning which witnesses have testified.

The Master: Have you got the original application concerning this particular parcel in court, Mr. O'Brien?

Mr. O'Brien: There was a blanket application made, your Honor, which referred to all of the parcels of the complainant company, but I will not put myself in the position of handing counsel and producing in court here something that he will have to produce under subpœna, because I am here representing the District Attorney, and today all the way through this session he has been recognizing me as Assistant Corporation Counsel for the City of New York, as if the City were a party. Now the point is, your Honor, that we require a subpœna, and they have not subpœnaed these 7809
applications.

Mr. Ransom: You stated that you would have them in Court. Now I ask whether you have made good on your promise. That question is susceptible of a yes or no answer.

Mr. O'Brien: We have been promised an inventory for many days, which has not been produced.

7810 The Master: Any further questions of this witness?

Mr. Ransom: Yes, sir. Are these documents which you stated that you would have in court produced, or are they not?

Mr. O'Brien: They are not produced.

Mr. Ransom: Are they in court?

Mr. O'Brien: They are in court.

Mr. Ransom: I ask the Master to direct their production for use.

Mr. O'Brien: You might with the same propriety, your Honor, give me the right to tell them to produce some records that they have
7811 got here.

Mr. Ransom: Any official records.

Mr. O'Brien: That is all right. I am not representing the Corporation Counsel of the City of New York.

Mr. Ransom: You are representing the Corporation Counsel of the City of New York.

Mr. O'Brien: I am representing—not as such. Now, what is the use of splitting hairs there.

Mr. Ransom: Your notice of appearance in this case is by William Burr, as Corporation
7812 Counsel.

Mr. O'Brien: I am representing the District Attorney alone, and counsel does not for a minute contend that the City of New York is in fact a party defendant here.

Mr. Ransom: Your appearance is William P. Burr, as Corporation Counsel.

The Master: I shall direct counsel for the defendant Swann, who states that he has in

court the document called for by counsel for 7813
the complainant, to produce it.

Mr. O'Brien: The counsel, with all due respect to the Court, feels that he is not and should not in his relation to his client, produce those papers, for the reason that your Honor must bear in mind that I am here as attorney for the District Attorney Swann. These papers were not subpœnaed here, and there is no one here who has been directed to bring them.

The Master: No, but you have them here in your physical possession, in your physical custody.

7814

Mr. O'Brien: But they are not within the jurisdiction of this court.

The Master: They are in the court room, and I direct you to produce them.

Mr. O'Brien: With due respect to your Honor, may I ask why, on what grounds you can direct that something be produced? Is it the same as if I had some communication here——

The Master: I can direct you precisely the same by an oral direction in court as I could by a *subpœna duces tecum*. You now have in your possession, custody and control a docu- 7815
ment which the complainant desires to use in this trial. I could have a subpœna served on you forthwith, and you could not evade or avoid the responsibility of that subpœna by giving that paper away. You have the paper, and I now, as the court, direct you to produce it.

Mr. O'Brien: But, your Honor, the counsel —I don't know whether you realize it, but coun-

7816 sel is endeavoring to put the defendant Swann in the position of producing something that is under the control of the City of New York.

The Master: I am going to protect your record.

Mr. O'Brien (Continuing): Which he has, and he wants to put counsel for the defendant in the position of voluntarily producing something here in court.

The Master: No.

Mr. O'Brien: It is not a matter of discourtesy to any one.

7817 Mr. Ransom: I just wish to make a statement on that. We are in this position. The City cannot produce this thing under our subpœna; the Tax Department cannot, because it is in their possession, this thing has been turned over, all these papers have been turned over to the Corporation Counsel's office of the City of New York, and these papers are now here in court in the possession of the Assistant Corporation Counsel.

The Master: You are repeating just what I have said a dozen times, and wasting time by doing it. I know all that.

7818 Mr. O'Brien: But your Honor, all other papers that have been produced have been produced here under subpœna.

The Master: When I direct you to produce that paper I am doing it pursuant to a subpœna. I am subpœnaing you now. It doesn't have to be in writing.

Mr. O'Brien: Reserving my right, I shall produce the paper, but counsel should appre-

ciate, counsel for the complainant, that there 7819
is no intention to be discourteous to anybody, but as a mere matter of preserving my legal rights.

The Master: I know that. I have your point. Whether I serve on you now, as I have the power to do, a subpœna in writing, or whether I give you an oral order or direction now, the result is the same. You are directed here to produce that paper.

Mr. O'Brien: Well, we hope to be never lacking in proper decorum, and we want to more than comply with the minimum of regulation. 7820

The Master: I think it is a tempest in a teapot anyway.

Mr. O'Brien: There is no intention to be discourteous to counsel, but we are not going to voluntarily produce papers.

The Master: You are not; you are doing it pursuant to an order of the Court in the nature of a subpœna.

Mr. O'Brien: And I am doing it, reserving my right to object to your Honor's ruling in the matter.

The Master: Precisely. You are in the same position as if I served a subpœna on you, 7821
and having the paper, you have to bring it into Court.

Mr. Ransom: We have been having trouble for days in trying to get documents from this tax department. It has been impossible for us day after day. We have had more difficulty in the past two weeks in getting papers from them, than we have had even in getting these deputy tax commissioners.

7822 The Master: The Master makes the statement on the record that he must ignore and disregard statements of counsel made of the character just made by counsel for the complainant. It gives the Master no information, and is subject to argument and dispute, and it leads us nowhere, and the record would be very much better if these statements were not made by either counsel in this case.

Mr. O'Brien: Your Honor might direct that that remark be expunged from the record.

The Master: No, I am not going to expunge anything.

7823 Mr. O'Brien: Will your Honor ask the counsel for the complainant to take the stand and put himself under oath?

The Master: No. You see, that is just what I want to avoid, these constant conflicts and discussions and disputes about collateral matters.

Mr. O'Brien: Then I request that the Master put the counsel for the complainant on the stand.

The Master: No. The Master refuses. Let us have the documents called for.

7824 Mr. O'Brien (Continuing): With reference to the statement he has made about the tax department and the deputy tax assessors.

The Master: The Master refuses. Now, what I want you to give me,—Does this affect this lot the witness is now talking about?

Mr. O'Brien: Yes, sir.

The Master: Mr. O'Brien, pursuant to the direction of the Court, has handed to the Mas-

ter the original application for correction of 7825
assessed valuation of real estate filed by Consolidated Gas Company, dated January 17, 1919, and endorsed, "In Board".

The Witness: That is not the date the application was filed.

The Master: Where does it show where the application was filed?

The Witness: (Indicating.)

The Master: No, that don't show it at all. The application is verified the 13th of November, 1918.

Mr. O'Brien: Will your Honor now just 7826
identify it and then permit us to record our objection?

The Master: That is all I want.

Mr. O'Brien: I don't think your Honor is going to let this paper in.

The Master: It has on it two dates, one New York, January 17, 1919, and a further endorsement "In Board January 28, 1919", the paper being in court. Have you any application to make with reference to it, Mr. Ransom?

Mr. Ransom: I offer it in evidence in so far as it shows the assessed value of land.

The Master: Before we get into that, are 7827
there any questions you want to ask this witness?

Mr. Ransom: Yes.

The Master: Proceed with them.

Q. Mr. Schumacher, you were interrogated with respect to 1919 sales of property at the corner of 159th Street and Amsterdam Avenue and 159th Street and St. Nicholas Avenue, and the sale prices

7828 thereof. Will you give the assessed valuations of those properties.

The Master: For 1919?

Mr. Ransom: Yes.

The Witness: Block 2109, Lot No. 1, northeast corner of Amsterdam Avenue and 159th Street, the assessed valuation for 1919, land $34,000., total $70,000.

The Master: And the other lot?

The Witness: Lot 16, the same block, northwest corner of St. Nicholas Avenue and 159th Street, assessed valuation for 1919, land $25,-

7829 000., total $58,000.

Q. You gave the sale price for those two together?

A. Yes.

The Master: The total for the two pieces was $128,000?

The Witness: $128,000.

The Master: And you said they sold for $130,000?

The Witness: $130,000 in 1919.

Q. And this property of the complainant, at the time or at any of the times you have visited it, did you ascertain the approximate time when it was

7830 built, the approximate age of this structure?

A. No, sir.

Q. You don't know what the conditions were in that neighborhood at the time this building used as a meter shop was built?

A. No, sir.

The Master: Does it look like a pretty old building?

The Witness: Yes, it looks like a building to be at least fifteen years old.

Q. Would you say that it was or was not a fact 7831
that the intensive development of the Washington Heights apartment district was subsequent to 1909?

Mr. O'Brien: I object to that as incompetent, irrelevant and immaterial, the witness has stated that he was not acquainted with this territory up to April, 1918, that he never bought or sold any real estate on the Heights.

Mr. Ransom: He said he did not have certain specific data, but he showed a general familiarity.

The Master: Read the question.

(The question was read by the steno- 7832
grapher).

The Master. Do you know?

The Witness: No, I don't know.

Mr. Ransom: That is all.

The Master: You are excused.

Mr. O'Brien: Has your Honor made a ruling?

The Master: No, I have not acted on it. I will let this witness go.

Mr. O'Brien: Just a minute before the witness goes.

The Master: You have another question? 7833

Mr. O'Brien: Yes, just a minute, if your Honor please.

RECROSS-EXAMINATION BY MR. O'BRIEN:

Q. Mr. Schumacher, the assessment was increased in 1919 over 1918, twenty-five per cent?

Mr. Ransom. On the complainant's property?

Mr. O'Brien: Yes.

The Master: On what, the Consolidated Gas Company property?

7834 Mr. Ransom: On the land?

The Master: He said he took the same figure as the year before. Didn't you, Mr. Schumacher?

The Witness: The land value was not increased.

Q. Was the total value increased?

Mr. Ransom: I object to the question. We have not interrogated him as to total value.

The Master: I will let him answer it.

Mr. Ransom: Exception.

A. The total value was increased in 1919.

7835 Q. 25 per cent?

A. About.

Q. Why?

A. Well, the company makes a report to the State Tax Board every year, for the year ending December 31st, and a statement of those figures is sent to the Department of Taxes and Assessments, giving their figures that they turn in to the State Board, giving the value they place upon their property for land and improvements, and we take that into consideration.

Q. Was the building improved any over the year before, do you know?

7836 A. No, sir, not that I know of.

Q. Any alterations made in it, do you know?

A. No, sir.

Mr. Ransom: You do not know that there were or not?

The Witness: I have no record of any being made; there is no record.

Q. This is a residential section in the Zoning Laws?

The Master: The question is not allowed. 7837

Mr. O'Brien: I do not think that was covered, your Honor.

The Master: I know it was.

Mr. O'Brien: You know it was?

The Master: I will modify that. What you mean is whether the Zoning Ordinance makes it a residential section?

Mr. O'Brien: Yes.

The Master: Yes, I will allow that. Do you know whether the Zoning Ordinance of the city makes this a residential section?

The Witness: A residential section.

The Master: That would mean that if the 7838 meter house were torn down they could not put up another meter house there, they would have to put up a residence of some kind?

The Witness: Yes, sir, a residence.

Mr. O'Brien: That is all.

The Master: Do I understand, Judge Ransom, that you offer this for the purpose of showing that any application made by the Gas Company for the revision of taxes for 1919, having reference to questions asked of the various witnesses, had relation to the land values and that only?

Mr. Ransom: It is offered for that purpose. 7839

The Master: For any other purpose?

Mr. Ransom: Well, I think it becomes a step in the official action with respect to the fixing of the final assessment. I do not think it is essential for that purpose; the essential purpose for which it is offered is to show that the company itself took a view of non-contract of the land values.

The Master: Then your purpose is, as I

7840 have stated it, to show that application for revision, to which the testimony of various witnesses has referred from time to time, has relation only to land values?

Mr. Ransom: You see, both Mr. Mulhall and Mr. Schumacher have created the impression that the company made application for the reduction in the value of the land. Now for the purpose of putting that right and showing what was the real nature of the application, this document becomes necessary and admissible.

7841 The Master: Read that last statement that I made to Mr. Ransom.

(The stenographer read as follows):

"Then your purpose is, as I have stated it, to show that application for revision to which the testimony by various witnesses has referred from time to time, has relation only to land values?"

The Master: Is that correct?

Mr. Ransom: Yes, sir.

The Master: Are you ready to stipulate that as the fact?

Mr. Chambers: No, I object to this paper.

7842 The Master: Are you ready to stipulate that the application made by the Gas Company for revision of 1919 taxes have only relation to the land values?

Mr. Chambers: No, I am not ready to stipulate anything at any time like that, about this.

The Master: Are you, Mr. O'Brien?

Mr. O'Brien: Are you addressing me as a representative of the City of New York?

The Master: No, as counsel for the defendant Swann.

Mr. O'Brien: We are in this case to-day, 7843
your Honor.

The Master: I am addressing you as counsel for defendant Swann.

Mr. O'Brien: I reserve my right to object on the regular grounds, your Honor.

The Master: Are you prepared to admit that the applications made for revision had only relation to land values?

Mr. Ransom: No, unimproved values of land.

The Master: Yes.

Mr. O'Brien: You are asking me draw a 7844
legal conclusion.

The Master: No, I am asking you whether you are prepared to make that admission before I dispose of this offer. The purpose for which it is offered is to show——

Mr. O'Brien: No, that is all right for counsel to come in and say we will offer it for this but not for that. If he wants to get some benefit from the paper——

The Master: Don't you see, Mr. O'Brien, I am trying to overcome that thing precisely. I do not want to let a paper in that may be used for other purposes. If counsel will agree 7845
that the purpose for which it is offered is a fact, as is apparent——

Mr. O'Brien: Counsel will not agree, as far as I am concerned.

The Master: Then I will have to dispose of this offer as it is made.

Mr. Chambers: I object to the paper on the following grounds: It is irrelevant, immaterial, incompetent, a self-serving declaration, a bill of

7846 complaint like their complaint in this case, and you might as well offer that in evidence—on the second page—as a complaint there. They call it a complaint over their verification. I also object on the ground that it is a self-serving declaration, that it tends to contradict his own witness, who testified about the application for reduction. That was not our witness. Now he wants to offer this, he says, for the purpose of impeaching and contradicting his own witness. He really wants to get that paper in, in my judgment, for the purpose of offering in evidence another bill of
7847 complaint like their complaint in this case, all of the allegation of which, or substantially all of which, are denied. On that typewritten page is a complaint.

The Master: Well, I will rule——

Mr. O'Brien: Then, your Honor, are you going to prejudge the matter before you hear me? I have something to say on it, and I want to put it on the record.

The Master: Let us hear it.

Mr. O'Brien: I join in the objection of the Attorney General, and I base my objection on the further ground that the paper was prepared
7848 after the complainant company began preparations for this litigation. It is manifestly prepared with a view to having it used here, that the duty of the complainant was to produce the tax commissioners here who made the assessment; that what may have been a report on the part of a deputy commissioner, or what may have been any of the other processes that led up to a final assessment, the closing assess-

ment of the tax department of the City, is im- 7849
material and irrelevant, here.

I object on the further ground that whatever the complainant company may have set forth in the paper, in which they objected to the assessment, did not prevent them from demanding or receiving, if the Tax Department were so disposed in their good judgment to do it, a reduction in the assessment. They file a general objection, and then put a clause in there which you might call a saving clause, in the event that the application were brought up in court here.

In other words, your Honor, when they 7850
present their application—this is only a form that gives them the right, filing it, within the time, to come in and be heard orally, and the oral argument is not produced, the oral stipulations, if any, that were made by the representatives of the company, if they appeared before the tax commissioner, may have waived that, and therefore this would only be misleading unless you had the tax commissioners here under subpœna and catechised them as to how they arrived at the conclusion that they did.

So that it is not in the interests of justice or truth to have this paper, unsupported by the 7851
testimony of the tax commissioners, brought in here. My particular objection to it is that counsel wants it received for one purpose and excluded for others, that he wants to derive some advantage that he sees from the paper coming in and exclude the disadvantages which would necessarily flow to the complainant company. The paper I think under the conditions

7852 under which it is offered—it has not been verified as yet by anybody, and under the conditions in which it is offered it is certainly incompetent, irrelevant and immaterial.

The Master: First, about verification, you were requested and directed by the Court to produce the original application for revision. Have you done that?

Mr. O'Brien: I cannot say that, your Honor. I received that this morning. I have received that this morning.

The Master: From whom?

7853 Mr. O'Brien: From a gentleman in Court here.

The Master: From whom? An official of the Tax Department?

Mr. O'Brien: Yes.

The Master: All right, I am going to assume it is the original. It appears to be verified before a Commissioner of Deeds, whose certificate is on it. I will not hear any further argument, because I have made up my mind what I am going to do about it. I will not hear any further discussion.

The Master rules as follows:

7854 Various witnesses, deputy tax commissioners, having been interrogated as to whether the Consolidated Gas Company had or not filed application for revision of the assessments made by the various witnesses for 1919, and it having been disclosed by the testimony that an application or applications had been made, the Master will permit the following to be spread upon the record from the original paper produced by counsel for the defendant Swann:

"Application for correction of assessed valua- 7855
tion of real estate"; and then you copy in all these blocks with the various lot numbers; assessed value of land, with all the figures thereunder, giving that table; "total assessment," and giving that total; "assessments should be fixed at", and giving that total. Also the following statement: "The extent of such overvaluation in the assessment of each lot is the difference between the assessed value of the land and the total assessment, and each assessment should be reduced to the assessed value of the land."

Mr. O'Brien: May I break in here and ask 7856
your Honor if you consider that evidence in this case? May I break in here and ask your Honor if you consider that evidence in this rate case?

The Master: Answering Mr. O'Brien's question, I have ruled that it is evidence of how far the application extended and as to what was asked. Judge Ransom is dissatisfied, and counsel for defendants are dissatisfied, but I make my ruling.

Mr. O'Brien: I broke in on your Honor. Are you going to complete the reading of that paragraph?

7857

The Master: That is all I am going to permit in. I am permitting in only a statement that they claim the assessments ought to be reduced to the land value as given. That is all.

Mr. Ransom: Merely the one sentence which you have put in is misleading. We ask to have the entire statement in that respect included, to show that the Company's position was that,

7858 by reason of circumstances recited, the said improvements, therefore, on October 1st, 1918, had no value for purposes of taxation, and that according to——

Mr. Chambers: Are you reading that on the record now?

Mr. Ransom: No, I am not.

Mr. Chambers: He is getting it in the record.

Mr. Ransom: Let me make my statement. I do not interrupt you all the time. We ask to have the Company's entire application in that respect made a part of this record. It is obviously misleading and inadequate, not to

7879 have the entire application shown.

The Master: I have made my ruling, and I will not change it.

Mr. Chambers: I think your Honor ought to strike out what he read from that.

The Master: I will not strike out anything, and I will not put in anything more. I want to make it clear upon this record, if Judge Ransom wants this spread upon the record, the lot numbers, block numbers, values assessed against land, value assessed against the property as improved, the amount for which they wanted the assessment reduced to, and the one statement that clearly indicates that they

7880 took the position that the improvements should not be assessed—if that is what they meant by the language that they used. The language that they used was that they want the assessment "reduced to the amount of the value assessed against the land", and they are not going to get me to permit anything more in this record. That is all.

Mr. Chambers: But, your Honor, he read 7861
some more in there.

The Master: If it is misleading, it is misleading because the gas company intended the language to be prepared in just that way, and I am not going to change that language.

Mr. Ransom: You might as well let the language go in.

Mr. Chambers: If the Master please, if I understood him correctly, he read some of that statement in his proposed offer.

Mr. Ransom: That is what I want to show.

Mr. Chambers: What I object to is having counsel offer——

7862

The Master: It was perfectly easy for the gas company, if it took the position that the land values were correct but that no amount should be charged for improvements, to say that thing—perfectly easy.

Mr. Ransom: We do say it.

The Master: Then it is not misleading.

Mr. Ransom: You only put a part of the language in.

The Master: That is all I am going to put in.

Mr. Ransom: I want to have this marked for identification.

The Master: You may have it marked for 7863
identification. Mark that original paper now for identification.

Mr. Chambers: You are liable to lose sight of a very important biplay here that I want to have stricken out of the record.

The Master: Let us have this marked first.

Mr. Chambers: Then I may have the floor?

7864 The Master: Yes, certainly.

Marked Complainant's Exhibit No. 207 for Identification.

Mr. Ransom: Will the stenographer take this and copy in the part you have read?

Mr. Chambers: Right here, your Honor, is the psychological moment to speak, and I want to speak. Judge Ransom made his offer of this statement, which I called a complaint, and it is called a complaint on the paper. He read some additional words that your Honor would not allow in. I think that ought to be stricken out of the record, for this reason: In the trial
7865 of a case, when counsel offers a letter in evidence which is clearly incompetent, and it is ruled out, it is always improper for counsel to proceed to read the letter in the record. Now, he has proceeded to read the vicious part of it into the record——

Mr. Ransom: I haven't read anything into the record.

Mr. Chambers: I think it ought to be expunged, because it should not be in there.

The Master: The record stands as it is. As I understood, Judge Ransom was making a statement with reference to what he wanted to
7866 show in that paper. It means nothing.

Mr. Chambers: He didn't have to do that, because your Honor had read it.

The Master: Judge Ransom, do you want——

Mr. Ransom: I want everything your Honor said put in, and more besides.

The Master: If there be any question as to the accuracy of the copy when it appears in the minutes it can be corrected later. I do not

want to give the stenographer this original. 7867
So, for the stenographer's use and convenience only, he will have a copy furnished by the Gas Company.

What I rule is that the schedule of block numbers, lot numbers, assessed value of land, total assessment, and what the assessment should be fixed at, shall be put into the record as evidence, and the statement—I will go just a little further. I will add this: "The said improvements, therefore, on October 1, 1918, had no value for purposes of taxation." I think that is only fair. What I am allowing in in addition to the schedule is the following: "The 7868
said improvements, therefore, on October 1, 1918, had no value for purposes of taxation. The extent of such over valuation in the assessment of each lot is the difference between the assessed value of the land and the total assessment, and each assessment should be reduced to the assessed value of the land."

At Judge Ransom's request I will add this: "A hearing on this application is respectfully requested."

This is signed by R. A. Carter, Vice President and is verified before a Commissioner of Deeds on the 13th of November, 1918. That is 7869
all I will allow in.

Mr. Ransom: I of course have an exception to your Honor's ruling.

The Master: You certainly have.

Mr. Chambers: Both parties, I take it, have an exception.

The Master: Yes.

(The following is the portion of the paper referred to):

7870 "APPLICATION FOR CORRECTION OF ASSESSED VALUATION OF REAL ESTATE.

Block	Lot	Assessed Value of Land	Total Assessment	Assessment should be fixed at
239	1	$90,000.00	$120,000.00	$90,000.00
	5	37,000.00	60,000.00	37,000.00
690	48	12,500.00	13,000.00	12,500.00
870	47	21,000.00	36,000.00	21,000.00
	60	410,000.00	2,300,000.00	410,000.00
951	35	53,000.00	60,000.00	53,000.00
952	7	292,000.00	500,000.00	292,000.00
	30	24,000.00	31,000.00	24,000.00
	33	8,000.00	9,500.00	8,000.00
	34	8,500.00	9,500.00	8,500.00
	35	35,500.00	57,000.00	35,500.00
953	1	526,000.00	851,000.00	526,000.00
972	45	9,000.00	9,500.00	9,000.00
978	1	10,500.00	16,000.00	10,500.00
7871	2	7,500.00	13,000.00	7,500.00
	3	7,500.00	13,000.00	7,500.00
	4	7,500.00	10,000.00	7,500.00
	5	17,000.00	23,500.00	17,000.00
	6	365,000.00	840,000.00	365,000.00
979	1	430,000.00	1,953,500.00	430,000.00
982	13	326,000.00	375,000.00	326,000.00
985	7	178,000.00	213,000.00	178,000.00
988	1	390,000.00	1,517,500.00	390,000.00
989	1	155,000.00	447,500.00	155,000.00
991	1	180,000.00	181,000.00	180,000.00
1028	38	400,000.00	550,000.00	400,000.00
1089	1	900,000.00	2,525,000.00	900,000.00
1092	7	400,000.00	493,500.00	400,000.00
	38	5,500.00	6,000.00	5,500.00
	38½	5,500.00	6,000.00	5,500.00
	39	5,500.00	6,000.00	5,500.00
1093	9	260,000.00	370,000.00	260,000.00
1107	7	375,000.00	400,000.00	375,000.00
1156	45	9,000.00	19,000.00	9,000.00
7872	46	28,000.00	61,000.00	28,000.00
1157	1	815,000.00	1,500,000.00	815,000.00
1177	21	265,000.00	290,000.00	265,000.00
1455	13	175,000.00	179,000.00	175,000.00
1642	33	48,000.00	95,000.00	48,000.00
1683	18	80,000.00	81,000.00	80,000.00
1998	50	22,000.00	55,000.00	22,000.00
1999	1	165,000.00	880,000.00	165,000.00
2108	23	21,000.00	80,000.00	21,000.00
2123	49	9,500.00	10,000.00	9,500.00
2175	15	13,000.00	14,000.00	13,000.00
	18	24,000.00	50,000.00	24,000.00
	*	* *	*	*

The said improvements, therefore, on October 1, 1918, had no value for purposes of taxation. The extent of such overvaluation in the assessment of each lot is the difference between the assessed value of the land and the total assessment, and each assessment should be reduced to the assessed value of the land. 7873

A hearing on this application is respectfully requested."

Mr. Ransom: I call upon Mr. O'Brien to produce the application——

Mr. Chambers: I suggest before we continue with that that we continue our discussion in regard to the inventory. 7874

The Master: Yes, I think so.

Mr. Chambers: What I wanted to say this morning, supplementing what the Hon. John O'Brien said, is this, that this inventory is essential for use by our engineers. They have proceeded as far as they can without it, and not having it, and we having asked for it ever since May 16th, having asked for it at various intervals from time to time and not having received it, the engineers have found it necessary for the time being practically to stop all their work along the lines of appraising that part of complainant's property which would 7875 naturally fall to the lot of an engineer.

The Master: Do I understand that Mr. O'Brien's statement, and your statement, is in the nature of an application to adjourn until the inventory is furnished?

Mr. Chambers: Well, it is in the nature of showing to the Master the situation in which we find ourselves in that if the time comes when we will want a lot of time in order to

7876 appraise this property, in order to do it properly we will want time. Either they can give us the inventory now so that we can proceed with our work along those lines, or we suggest that they suffer the consequences of a good deal of delay later on.

The Master: What I want to get clear in my mind first is, you do not put it in the shape of an application to adjourn until the inventory is furnished.

Mr. Chambers: No, I put it in the shape of a sharp warning.

The Master: Mr. O'Brien, do you make it in
7877 the shape of an application to adjourn until the inventory is furnished?

Mr. O'Brien: There is an ever-present request on the record on my part for an adjournment of this trial during the heated term.

The Master: I know, but give me an answer yes or no to my inquiry, whether your application is in the shape of an application to adjourn until the inventory is furnished?

Mr. O'Brien: Yes, it is.

The Master: All right, then, your application is for an adjournment until we get the inventory.

7878 Mr. O'Brien: I do not want to have that confused with my insisting that we shall have no hearings during the months of July, August and September.

The Master: Well, July and August are pretty well gone.

Mr. O'Brien: I made the application when the recent motion was heard by Judge Mayer. I made an application that the hearings be put over until October. I based that upon

several grounds, and particularly the fact that 7879
counsel for the defendants had not had any
vacation, they have been engaged in arduous
work for months, and it was inhuman to re-
quire them to go ahead with this trial.

The Master: That is Judge Mayer's fault,
not mine.

Mr. O'Brien: That matter, of course, is still
before Judge Mayer, the request for an ad-
journment.

The Master: Yes, what I wanted to get clear
in my mind was just what the statements
meant that are being made to-day.

Mr. Hayward: I don't want to encumber 7880
this record with what knowledge I have got of
New York real estate in particular, and board-
ing houses and saloons in especial, or enter
into an academic discussion of the relative
authority of state and city in matters ranging
all the way from Binghamton down to the
Hudson River, but I do know something about
this case, and I have been present twice, once
on May 16th, and once a week ago last
Monday, when Judge Mayer directed these
complainants to furnish us with an inventory,
and their attitude, if the Master please,
toward Judge Mayer, is exactly the same as 7881
it is toward you and toward us and toward
everybody else, and that is an attitude of utter
defiance and utter disregard of the ordinary
and usual routine of a trial of a lawsuit. We
went before Judge Mayer with a specific re-
quest, rather at the Master's suggestion, and
I told the Judge that we were not there com-
plaining of the Master in any sense of the
word, or of any of the Master's rulings, or of

any lack of fairness on his part, but explained to Judge Mayer that in every case where these questions came up, that you felt that you were to a large extent limited by the order appointing you, and that for that reason, and with your approval and with your knowledge, we came before him to have that matter modified, and Judge Mayer very sensibly said let us sit down and see what it is, and of course we all sat down, and we told him there were three things we have been asking for, two of them we felt we should have as a matter of right, and the third was a question in his discretion as to whether the Court should direct it or not. The first was this inventory; the second was the nine questions that had been written out and propounded to Judge Ransom; the third of them was what I had asked, that Judge Ransom indicate to us, bearing in mind the limited funds we had and the limited time we had for preparing to learn the true values and so forth, the real truth of this case, that he would furnish us with an order of proof, not ironbound or ironclad or anything, but in a general way, instead of playing hopscotch in this case as he has, and I showed the Judge how he put one man on the witness stand for one sort of thing and jerked him off and put another on, and then dragged these real estate appraisers down here until we could not tell where we were or anything else, and could not possibly go along in an orderly sequential way to prepare with as little annoyance as possible, and as little loss of time as possible to meet the issue. Judge Mayer (and I am not going to make any untrue statement or any

inaccurate statement or any colored state- 7885
ment, notwithstanding what Judge Ransom will wave his arms and say when I am through), I am telling what Judge Mayer said. I asked Judge Ransom when we could have this inventory, and Judge Ransom said a week, and that week was up last Monday.

The Master: I just asked Judge Mayer about that, and he said he understood that you would have it this week.

Mr. Ransom: That is true.

Mr. Hayward: He said one week, is what he said.

The Master: Judge Mayer's understanding 7886
was that you would have it this week.

Mr. Hayward: And he said further that we were to have these questions answered; and he said further——

Mr. Ransom: He didn't say that.

Mr. Hayward: Don't interrupt me, Judge Ransom. I ask the Master to instruct Judge Ransom to sit down and wait until I am through. Will you do that?

The Master: Yes, I will do that. Don't interrupt him, please.

Mr. Hayward: I thank you very much.

The Master: That don't apply to me. 7887

Mr. Hayward: No, you are already sitting down. My understanding was Judge Ransom said about a week. Judge Mayer predicated his entire decision, and if I could speak to Judge Mayer a minute I could show him clearly that he is mistaken if he said that it was to be filed this week—he predicated his whole decision on the filing of these documents. He told Judge Ransom in connection with the

7888 order of proof that I had asked for, that it probably was not a matter of right, but that our reason for asking for it was that it would be of use to us, and it would not be an unreasonable thing to ask for, and while he did not direct it, he strongly suggested, in view of the expedition they were asking for, that it would be a good thing to give to us. To show you it was Monday these papers were to be filed I asked the Judge just before we left what we would do for the rest of that week. That was Monday, if the Master please, a week ago last Monday, and he said—I said, "What are we
7889 going to do about the rest of this week, you can't make your decision until a week from to-day," and Judge Mayer said, "Colonel, there is only Tuesday and Wednesday left, after to-day, and then we will have this other data, and I can decide this matter at that time." Obviously meaning, and obviously having in his mind at that time what I had, that Judge Ransom would file that within the week. That was a week from last Monday, and it is ten days and we are still groping in the dark. That is all I have to say. I think we are entitled to a continuation.

7890 The Master: Do you make an application for an adjournment until the inventory is filed?

Mr. Hayward: Yes, if the Master please, with the understanding that when that inventory is filed that we have been trying to get since last May, that I want to make an honest effort to familiarize myself with the company's property and their claimed values, and that when that inventory is in my hands, or a copy of it, I want to go to work on this company's

property, and it may be that after I get that 7891
inventory, and probably will be, that I shall ask the Master for a reasonable time, I have got no engineers and no experts to go over this company's property and gain an intelligent idea of it, perhaps three days or perhaps a week, for whatever time I ask will be a reasonable time.

The Master: Have you anything to say, Judge Ransom?

Mr. Ransom: Your Honor is correct in your statement of what Judge Mayer said of last Monday. The matters which have been referred to by counsel were brought up, the mat- 7892
ter of a so-called inventory, or as it was described before Judge Mayer, a statement of the items of property which we shall ask you to find is a part of our rate base for the purposes of this case. Judge Mayer said that it should be furnished, and that his decision upon the motion which was made to him at that time by the defendants would be made when that was furnished. He directed that that should be furnished during the coming week, and it will be furnished during this week. It would have been furnished earlier in this week if it had been physically possible. The work has 7893
gone forward to the utter limit of ability, and the inventory, if you call it that, will be furnished at the earliest possible moment this week. So far as the other things were concerned Judge Mayer said that there was no obligation to furnish order of proof so far as the matters of original cost, and no direction was given by Judge Mayer. The statement was made that we were seeing what we could do in

7894 the way of getting together that data, but it
of course, obviously improper that we shou
be called upon during the preparation of a
presentation of the complainant's case, to
work which these defendants ought to ha
done long ago from their access to the co
plainant's books and properties, by way
valuation, if they want to make it, by way
inventory if they want to make it; by way
research further in the company's books a
records of the sort which they have been ma
ing. Now, the proposition that the complai
ant in this case should not only prepare a
7895 present its own case but should also prepa
and present the defendants' case meanwhil
and that the complainant should make up f
the defendants various records which they c
use to check the records which they have a
ready been making during these past month
is the most absurd and unjust proposition th
I have ever heard made in a court of law. W
are, so far as most of the elements of proper
which we are going to claim, and the values,
these defendants were apprised of them month
ago, in detail lists. There has been no eleme
of property covered or referred to in this ca
7896 of which they were not apprised by formal lis
months ago. So far as the question of wh
shall be done by way of adjournment——

Mr. O'Brien: Why, you even amended th
list, your Honor——

The Master: Don't interrupt him. I wo
permit it.

Mr. Ransom: So far as the question of a
journments or modifications of the order r
garding the hearing, and so far as the questio

of what shall be furnished in the way of an 7897
inventory of the original cost figure, that matter is in the hands of Judge Mayer, and I take it that when we furnish that schedule of property for rate base purposes, he will then dispose of the motion which is pending before him, and I can conceive of no reason why the defendants saw fit to bring in this issue this morning and take up the time which should have been taken in the presentation of testimony, except that they feel that being on the verge of getting this which they have asked for, they feel that they ought first to make a big hue and cry about it, so that it would 7898
appear on the record that we gave it under pressure. There has been no difficulty about it. The direction of Judge Mayer will be complied with. It would have been complied with earlier this week if it had been physically possible. The men who have been at work on this work worked Saturday, Sunday and Labor Day, night and day, and it will be furnished at the earliest possible moment.

The Master: Do you want to say anything more, Mr. O'Brien?

Mr. O'Brien: I certainly do, and I want to say it with all the emphasis that I can con- 7899
trol. I want to say to your Honor, and call your Honor's attention, in the first instance, to just what I think is a pure evasion and subterfuge. Future events will confirm or not confirm what my guess is now. In the hearing before Judge Mayer, in the statement just made to you, I would have you note the form of declaration used by the counsel for the complainant, when he refers to our request for an

7900 inventory, which he backs away from the term "inventory", and says "We are going to give them a statement of the property that we rely upon for the purposes of a base upon which a fair return is to be considered in this case." Now, what that means the Lord only knows and future events will only bring out. Your Honor can see if it has taken him from May 16th until to-day, or what will be, perhaps, the end of the week, to get up merely an inventory, a statement of some kind of the properties, how long will it take to investigate it? Now, the defendants are here not asking any courtesies; they
7901 won't ask any courtesies; they have not asked any courtesies, but they are here in this matter—this matter—this request for the inventory depends on, as I see it, on two propositions; one is that if we don't get it, we can proceed to ask in the usual form for a bill of particulars. We could have done it before, but it would be time-consuming, and they would have been required to give it to us, or have an examination of witnesses before trial, all of which means long delay. The second proposition is that it has become a practically fixed rule, governing all rate cases, that there must
7902 be a frank disclosure of their property. Public utilities do not open their books and tell you come in and go into their books and look at things because they want you to be there, but because it was laid down in the Knoxville case, and followed in all rate cases since, that there must be an open—a putting of cards on the table, as almost a tradition precedent to their proceeding at all in a rate case. So that it is not a matter of courtesy which we want; it is a

matter of right. We are entitled to know what 7903
the properties are, the inventory of their properties, and it may be we will want to have the inventory of their properties, even though they want to rely upon some small element in the case as the base in this case. There is no fairness and there is no candor, your Honor, and there is no frankness in the way in which they have acted. We are here on September 4, 1919, and on May 16, 1919, they were asked for a simple, plain statement of the properties, so that engineers, investigators or accountants might proceed in an orderly way to check up and go over that matter and prepare for this 7904
trial; but there is no candor, nor is there candor—they have pleaded, your Honor, and I refer to this also as another instance of the barage work done by the complainant in this case, they have alleged in their complaint that they had—that there was not a fair return under this eighty cent law from the time it was written on the statute books in this state in 1906. They have set that up, and the District Attorney moved for a dismissal of the complaint on the ground that it did not set forth a cause of action, and one of the things that he referred to in the very learned brief 7905
and argument presented by him, was that they had—that there was only generalizations in the complaint, that they did not set forth the facts and the data upon which general conclusions were drawn, and that what I am referring to now is a splendid illustration of their attitude.

I brought that up in this matter before Judge Mayer on May 16th. I said, "Your Honor, we ought to know whether this case is going to

7906 embrace the lack of fair return, the proposition of a lack of fair return every year since the statute was enacted, because it would mean a stupendous matter of preparation, and a needless task to get in and prepare for the issues in this case, if they intend to set up for every one of those years an unfair return". Now, counsel was evasive then, and he did not give a fair, candid answer, and I assert that that kind of attitude does not win for any client, and it won't win in this case. Wait until I get this point, so you will know what I am driving at, your Honor. I asked them that there ought
7907 to be some statement made, definite statement made as to whether in this case they are going to put in issue the operating expenses and the operating revenues of every year since 1906. What do we get from counsel for the complainant? A direct, positive, manly statement? No. But a kind of an evasive statement that they were entitled to the going value for lack of return in those years. Now, that is as near as he came to a definite statement. Even if he would have set up some new-found theory of that kind, it would mean that they would have to go over that line of proof.

7908 And now we have gone along for weeks in this case, I am not going to say anything about the hop scotch method that has been adopted, the time consuming method of presenting the case, but we have gone along and the accountant's testimony has all been confined to the year 1918, the valuations put in through the deputy tax commissioners has been confined to the year 1918, and we don't know now whether they are going to embrace these other years,

and if he is going to embrace these things in 7909
his case, he ought to come out and say so, so that the time that is being consumed by men who are paid out of the small appropriation that has been made to represent the public in this case, so that that time may be economically and efficiently spent with the idea of producing a quick result consistent with justice and fairness to all concerned.

Now I say, your Honor, that is not candid, and it is not frankness, and these things ought to be emphasized in transitu from the beginning of this case right through, so that you will understand about it. We ought to have a state- 7910
ment whether they are going to set up here the claims for all the years; whether they are going to assert and try to put in proof here that they have not had a fair return during any of these years. There ought to be some little outlines made, not that these things are necessary—I mean are required by a rule of law, but they are required by the rules that have been generally adopted throughout this country in rate cases, and I want to say to your Honor that in every other rate case that is tried, you will find that the public utilities will begin by putting in in a logical way a statement as 7911
to the properties that they have.

Mr. Chambers: May I say just one word?

The Master: I won't permit anything further.

Mr. O'Brien: (Continuing.) In this connection, before I wind up, I want to call your attention to the time that was consumed with the witness Alrich. One might say, on looking through, that the defendant went into such

7912 minute cross-examination of that witness, but time would have been saved if we had known just why he was presented. We were compelled to assume that may be they were proving each item of property through the witness. Looking back now, however, after his testimony is finished and the cross-examination is finished, he does not prove it. It was a birds-eye view, a cursory general statement about their properties, but when he was put on, having no inventory, we were compelled to assume that they were going to prove each item of property. If the time is to be consumed by
7913 somebody else, the time that was wasted here putting that man on the stand is attributable to the counsel for the complainant.

Mr. Chambers: I have just one word.

Mr. Hayward: I want to say just one word with regard to this paper that I have in my hand. It is a list of statements received from Judge Ransom that we have heard about since last May, that he has purported to give us in lieu of an inventory, and as to doing all that was necessary, and I want to direct the Master's attention to the way the testimony has been put in, and how impossible it has been for us to prepare it. There is, A, the real estate
7914 values, and as I remember it B, it gives nothing, and they go right on down the list, and down on the items on the bottom of Exhibit I, when he brought these books in here, Mr. Teele, and the other man, Mr. Brundage, with these books. To show how impossible it has been for us to follow this in any orderly sequence, if you will just examine it, you will see how absurd his claim is that he has furnished it, and what he

says, if the Master please, that he has been 7915
rushing to get this inventory ready and tells to the Court that since May 16th he has not been able to get a list of their property on which they rely, and it is four months ago, practically, and then expects us to do it——

The Master: I will tell you what I am going to do.

Mr. Chambers: May I say a word?

The Master: Don't say anything more. I just asked Judge Mayer the one question as to how long he gave Judge Ransom to furnish that inventory. I told him there have been a number of statements made, some say a few 7916
days and some say a week, and I had the impression it was a week. He said "Why, my impression is that it was to be furnished me this week". Of course, that was his offhand impression. That was simply in the course of a talk.

Mr. Hayward: I can refresh his recollection.

The Master: It is not important, because the week is pretty well gone anyway, a few days left.

Mr. O'Brien: That was the answer of Judge Ransom when Judge Mayer put the question. 7917

The Master: We have only one day more this week.

The Master: Here is the situation. We have only got one more court day this week. If that inventory is not furnished to you gentlemen before Monday morning or if the inventory furnished is not what you say should be furnished, or if there be any question about that at all, I am going to arrange with Judge Mayer

7918 for an adjournment of the hearing so that he may dispose of any questions arising as to his directions in reference to that inventory. If the inventory is not furnished by Monday morning I am going to ask Judge Mayer to take up the question as to whether he will modify his order, to authorize me to adjourn until it is furnished. If the inventory is furnished and you gentlemen think you require time to prepare, in the light of that inventory, additional proof, I am going to ask Judge Mayer to pass upon that. So that those questions will be out of the way.

7919 I think that is the best way of handling it at this time. We will have a direction, if the inventory is not filed, as to how long this adjournment is going to be. When it is filed, Judge Mayer will have to pass upon how much time I shall allow for further examination of it, and we will go ahead with it in that way.

Mr. O'Brien: Will your Honor ask counsel now to state whether or not he intends to put in proof as to the operating revenues and operating expenses of every year since the statute was passed, and the value of the properties of the company each year upon which he claims

7920 there was not a fair return?

Mr. Chambers: We can save a lot of money if he will tell us that he is going to confine his case to 1918.

Mr. Ransom: I am perfectly willing to make a statement on that, and I have made the statement before.

The Master: Make the statement.

Mr. Ransom: We expect to prove to a considerable degree the operating expenses and

revenues for years prior to 1918, as well as 7921
for 1919. We intend to furnish to all the defendants a schedule showing these revenues and expenses. I am not able at this time and do not think it would be well to try to indicate just to what extent it will appear to be necessary to go into all of the details of years like 1906, 1907, 1908 and 1909. It is not the intention of the complainant to rest wholly upon 1918, or upon 1918 and any given number of months of 1919. We have submitted to the defendants schedules showing operating expenses for every year since 1905, and their revenues and expenses have been in large part 7922
checked in behalf of at least one of the defendants. It would be a safe assumption on the part of the defendants that we are going into revenues and expenses prior to 1918.

Mr. O'Brien: Your Honor, can't you see right away——

The Master: I will not hear any more argument on it.

Mr. O'Brien: That if we were to proceed on the assumption and accountants and engineers are employed to go over all that, it is going to first put the defendants to great expense, that may turn out to have been unnecessary, 7923
because this proof may be limited to 1918 and part of 1919, that it does not sound in good faith to say that we may do it and hand out a lot of data indicating that they are, and turn over the defendants' representatives to a wild goose chase, meaning the spending of money and the spending of time.

I make that comment here for future reference in this case, your Honor. I think while

7924 the rule of law may not require it, good faith requires it. He is in equity; clean hands require that he state now—and he ought to know now what he is going to prove,—and require that he give us a statement of whether or not he is going into those matters, so that he will know whether or not he is going into those matters, so that we will know whether or not statisticians or accountants or others ought to investigate those returns.

Mr. Ransom: You ought to investigate every statement that has been furnished you, the same as the other defendants have.

7925 Mr. O'Brien: And I want to say further, speaking about references, when the witness Teele was last on the stand they were sneaking in there a paper that had not been furnished us. That was a paper, to be submitted, that referred to rental from facilities.

Mr. Hayward: Has the Master been able to find out when this rabbit in the form of an inventory is going to be produced from the magician's hat?

The Master: I expect it will be in the hands of counsel for the defendants before Monday morning.

7926 Mr. Hayward: If that is so, and counsel has willfully refused to give any more idea or any more information as to when it will be produced,—I ask that we adjourn at one o'clock to-day until Monday morning, to see if the inventory is in our hands at that time.

The Master: No, I am going to use up the time to-day and to-morrow.

Mr. Ransom: You will not be asked to proceed unless the inventory is in the hands of

the defendants before Monday morning. The 7927
complainant will consent to an adjournment until it is furnished.

The Master: My notion now is that I will not go any further on Monday unless the inventory has been furnished.

Mr. Hayward: We have got to have an opportunity, of course——

The Master: Then will come up the question as to how much time is necessary to prepare. My attitude at this time is that I am not going to take further proof from day to day on promises that an inventory will be served. I am going to see that the inventory 7928
is filed pursuant to the Judge's direction before we proceed any further.

Mr. Ransom: I ask Mr. O'Brien to produce the application of the Consolidated Gas Company to the Board of Taxes and Assessments of the City of New York, covering Block 2583, Lot 360, and Block 3236, Lot 1. That is the original application of which Mr. Mulhall had a copy here in court the other day, and Mr. O'Brien said that he would have the report next Wednesday.

The Master: I remember what the record said.

Mr. Ransom: I call upon Mr. O'Brien to 7929
produce it.

The Master: Mr. O'Brien, have you that report?

Mr. O'Brien: I have not. The applications I had I handed up here when we were on the subject this morning.

The Master: I think I said I could use a

7930 copy if the original were not in court, did I not?

Mr. Ransom: You said after subpœning the original.

Mr. O'Brien: I understand there was a blanket application made with the same language in each one. There is a blanket application made, as I understand it, by the complainant company, covering all of its properties, with the same language used in each. Then the individual applications covering each parcel——

The Master: Why can we not use the copy

7931 Mr. Ransom has subject to corrections? Is there any objection, gentlemen, to my ruling upon the copy in the possession of Judge Ransom as if the original were in court?

Mr. O'Brien: Was that not incorporated in the list you presented, Mr. Ransom?

The Master: No, it is a separate application. This is a Bronx application.

Mr. Ransom: They have not got it. I asked about it.

The Master: What month was it?

Mr. Ransom: It was those two, both of them. The man on the second one has not yet been interrogated.

7932 The Master: Is there any objection to Judge Ransom offering this application affecting Lot 360, Block 2583, with the same force and effect as if the original were in court? I think it is perfectly safe to assume that this is a correct copy. I am going to make the same ruling with reference to this as I did with reference to the other application, namely, I am going to permit Mr. Ransom to spread on the record the fact that the application was made to

revise, in the language of the application, without going into what is called the schedules. 7933

Mr. O'Brien: If I had it in court, your Honor, my position would be that I would not produce it except on the direction of the Master.

The Master: And I would make the same direction. What I want you to do is to assume that you did comply with my direction and did produce the original, reserving to yourself the same right to object and making the same record precisely as we did on the paper that was marked for identification Exhibit No. 207, I think it was, and rule on it as if the original 7934 were in court. Is there any objection to that?

Mr. Hayward: No, I have no objection.

The Master: Mr. O'Brien and other counsel for the defendants object to the offer of Judge Ransom of the application for revision of the assessment on Lot 360, Block 2583.

Mr. O'Brien: Your Honor will renew the same statement that I made in the record?

The Master: With the same statement on the record with reference to this exhibit, that the original is deemed to be in court. Mr. O'Brien declines to produce it until ordered by the Master, the Master ruling that his old direction is 7935 in the nature of a subpœna *duces tecum* on Mr. O'Brien, and the document being in theory handed to the Court and the Court ruling that Mr. Ransom may offer it.

On Mr. Ransom's offer Mr. O'Brien and other counsel make the same objection as they did to Exhibit 207 for identification, and the Master makes the same ruling, and now rules that he will permit Judge Ransom to spread upon the

7936 record as evidence in the case, and as having reference to matters brought out on the cross-examination of the witness Mulhall, the following:

"An application for correction of assessed valuation of real estate, Block 2583, Lot 369. Assessed value of land $67,000, total assessment $72,500, assessment should be fixed at $67,000."

Also the following statement:

"The said improvements, therefore, on October 1, 1918, had no value for purposes of taxation. The extent of such over-valuation in the

7937 assessment of each lot is the difference between the assessed value of the land and the total assessment, and each assessment should be reduced to the assessed valuation of the land. A hearing application is respectfully requested." It is signed by "R. A. Carter, Vice-President" and verified before a Commissioner of Deeds on the 13th of November, 1918.

Mr. Ransom: Now, your Honor will allow me an exception to your refusal to put the entire document in evidence.

The Master: Yes.

Mr. Ransom: And may I have this copy

7938 marked for identification?

The Master: Yes.

Marked Complainant's Exhibit 208 for Identification.

Mr. Chambers: There are one or two slight corrections that I would like to make in the record. On page 2425, folio 7274, I am reported as saying, "I am still carrying him on the tax maps." What I really said was, "It is still carried on the tax maps."

On page 2426, folio 7277, I am reported as saying, "Why, it is identically so", whereas I said, "It is for identification purposes only". 7939

The Master: There are a number of errors of that kind in the record which are bound to creep in. The Master notes that he frequently is misquoted, but he appreciates that the stenographers sometimes work under great difficulties and do not get the statements accurate, and sometimes it happens that counsel or the Master are inaccurate in their own statements and find the errors after they appear in the record.

Mr. Ransom: The Department of Taxes and Assessments has produced here the Official Block Tax Maps, the public maps covering certain parcels which I wish to offer in evidence. If necessary I will put a witness on the stand. 7940

JAMES F. DONOHUE, called as a witness on behalf of the complainant, being duly sworn, testified as follows:

DIRECT-EXAMINATION BY MR. RANSOM:

Q. Where do you live?

A. 29 East 198th Street.

Q. What is your position in the Tax Department? 7941

A. Messenger.

Q. You have produced here, pursuant to subpena, two books of the Official Block Tax Maps of the Department?

A. Yes, sir.

Q. As they are kept by the department, and are kept up to date from time to time?

A. Yes, sir.

7942 Mr. Ransom: I desire to offer in evidence such portion of these maps as cover the following parcels:

Block 1089.....Lot 1
Block 1090.....Lot 23
Block 1107.....Lot 5
Block 1092.....Lot 7
Block 1093.....Lot 9
Block 1670.....Lot 1
Block 1692.....Lot 1
Block 1682.....Lots 8 and 11
Block 1701.....Lot 5
7943 Block 1712.....Lot 2
Block 1683.....Lot 18

Mr. O'Brien: I would like to ask the reason that they are produced.

The Master: Well, I suppose they might be useful as identifying the lands assessed by the various witnesses.

Mr. O'Brien: No, they have some other purpose than that.

The Master: Being in a more complete record than the inquiry of counsel.

Mr. O'Brien: Will counsel state what he asks that these be received in evidence for?

7944 The Witness: Yes, I ask counsel to state the purpose of the offer.

Mr. Ransom: I think your Honor accurately apprehended it. They are offered to show the identity and dimensions and boundaries and locations of the parcels which have been assessed.

Mr. Chambers: That contradicts his own witness.

The Master: You won't want to cross-exam- 7945
ine Mr. Donohue about this, will you?

Mr. Ransom: He has to stay here with the books anyway.

Mr. O'Brien: Why don't you come out and tell us the full reason why?

Mr. Ransom: You are the most suspicious person in the world without reason.

Mr. O'Brien: Are Alrich's dimensions inaccurate, are your diagrams inaccurate?

Mr. Ransom: I am offering these to show the locations and dimensions and boundaries of the property assessed. 7946

Mr. O'Brien: The Court received in evidence a diagram prepared by the witness Alrich which he swore he compared with the tax map.

Mr. Ransom: The Alrich map showed property used. It was made up from deeds and from court judgments. There are certain instances, a few instances, in which the company claims that it owns and uses, pursuant to judgment or deed, a larger parcel than that which the city has assessed, because the city maintains a contrary position as to the company's claim. But, we are entitled to show the boundaries and dimensions and the like of the 7947
property assessed.

Mr. O'Brien: That does not give you ownership, and if the city were to assess a property and give it certain dimensions that is not material in this case. Your Honor, it does not give them the ownership that they have been assessed for.

The Master: Of course not.

7948 Mr. Chambers: Now, the various lots and block numbers he gave us, it does not give any lot at all in the book. The first one is Block 1089, Lot 1, and there is no such lot. I want to see the rest of them before we make our objection.

Mr. O'Brien: Go through each one of them and see if it is right.

Mr. Chambers: Where is Lot 1?

Mr. Ransom: The lots are numbered in red ink and small figures.

Mr. Chambers: Where does it say Lot 1? There is a figure 1, what does it mean?

7949

The Master: That means the lot number.

Mr. Chambers: Does it; I am not so certain as you are. Let us take them up one by one.

Mr. O'Brien: I move your Honor at this time that Complainant's Exhibit 178 be stricken from the record.

Mr. Chambers: As inaccurate. It has already been shown to be inaccurate.

The Master: Motion denied.

Mr. O'Brien: I call the Master's attention, in support of my application that Exhibit 178 be stricken from the record, to the fact that

7950

said Exhibit has on it, upon the section known on the tax map as block 1089, a portion called block 1107, lot 7, which does not appear upon the tax map.

Mr. Ransom: There were certain reconciling numbers presented.

The Master: What was the next?

Mr. O'Brien: Block 1093, lot 23; and the next is 1107, lot 7.

Mr. Ransom: I may say that I am going to 7951
offer the tax maps for every parcel of property shown on Exhibit 178. I have only two of them in Court to-day, but I shall offer the others when they are here.

Mr. Chambers: Well, there is no such number on the tax map.

The Master: Yes, there is.

Mr. O'Brien: Your Honor, we are going to get into a maze of confusion here. Counsel wondered why I am suspicious of the complainant and its counsel. We have got deeds offered in evidence that make certain descriptions of 7952
property. Now, he wants tax maps that are built up without respect to ownership, do not refer to ownerships at all, but applies for taxing purposes.

The Master: I am going to receive them simply for the purpose of identifying the assessments testified to.

Mr. O'Brien: Will you let me call your attention right here to this: Turn to lot 7. I call your attention to the discrepancy between the witness Alrich's diagram of the complainant's property in West 42nd street as shown on Exhibit 178, and page 31 of the map which 7953
counsel is asking the witness from the Tax Department to produce, lot 7 on the diagram of the witness Alrich, that is, Exhibit 178, sheet 6, is inscribed upon a certain L-shaped plot bounded on the north by 42nd street and running south a distance of 197 feet 6 inches. The notation, lot 7, is not assumed to include the shaded portion of the diagram covering

7954 property apparently on the dock portion of this block. I call your Honor's attention to sheet 31 of the map in question, where the red letter 7 appears upon a block marked 1107. The marks made in red ink indicate that lot 7 takes in an abrasive property that belongs to the city. Therefore, the use of the terminology, "lot 7, block 1107", upon witness Alrich's diagram, Exhibit 178, is entirely different from the lot No. 7 as shown upon the tax map.

The Master: I am going to receive these
7955 maps for the purposes indicated.

Mr. O'Brien: Aren't we going to get a chance to call your attention to other discrepancies?

The Master: I don't care how many discrepancies there are. I am going to take the maps as official maps of the city, subject to such variances as you may point out between them and exhibit 178.

Mr. Chambers: Whom are we going to cross-examine about this? I would like to ask questions about every one of these lot and block numbers, about what these tax maps show.
7956 This messenger doesn't know.

Mr. O'Brien: Your Honor doesn't intend to put this book in here without catechising somebody about it?

Mr. Chambers: They have not proved they are correct.

The Master: They are the public maps, subject to public inspection.

Mr. O'Brien: Let me ask a few preliminary questions before your Honor makes the ruling.

By Mr. O'Brien: 7957

Q. Mr. Donohue, how long have you been in the Tax Department?

A. Eighteen months.

Q. During all that time you have simply been a messenger?

A. That is all.

Q. You never prepared any records?

A. No, sir.

Q. You never were engaged in preparing maps or diagrams or making notations on them?

A. No, sir.

The Master: Just a moment. Have you a 7958 subpœna?

The Witness: Yes, sir.

The Master: Who gave you the subpœna?

The Witness: One of the secretaries.

The Master: Who is the secretary?

The Witness: Mr. Tyng.

Mr. Chambers: We want the man who knows something about it.

The Witness: Mr. Vogel is the surveyor.

Mr. O'Brien: Will you let me call your attention to some other matters that will come up and will produce a confused situation here, unless it is taken up minutely? 7959

Mr. Ransom: I offer in evidence the *subpœna duces tecum* on behalf of the complainant.

The subpœna referred to was received in evidence, and marked Complainant's Exhibit No. 209.

Mr. O'Brien: I call your Honor's attention to this, that the question of apportionment of

7960 plots may be important here, and a great many other matters may be important, and before your Honor passes on it, we ought to have a witness with some knowledge, so we can examine into it, to find out just what these figures and notations mean.

Mr. Ransom: These are official records and prove themselves. There is no witness necessary.

Mr. O'Brien: They don't prove themselves, and are not admissible.

The Master: Has the *subpœna duces tecum*

7961 been offered in evidence?

Mr. Ransom: No, I offer it in evidence.

By the Master:

Q. Mr. Donohue, you were given this subpœna by Mr. Tyng?

A. Yes, sir, the Secretary.

Q. And these books?

A. I got the books out myself; I have jurisdiction of the records.

Q. You have jurisdiction over the records?

A. Yes, sir.

Q. And you have produced these two books in pur-

7962 suance of that subpœna?

A. Yes, sir.

Q. These two books are produced in pursuance of this subpœna?

A. Yes, sir. The subpœna calls for fourteen maps——

Q. But these two are produced in pursuance of this subpœna?

A. Yes, sir.

Q. And these are the official maps on file in your 7963
department?

A. Yes, sir.

Q. Are they the public maps?

A. Yes, sir.

Q. So that if I or one of the counsel wanted to look at a map to find out what property is described by block and lot number we would look at these maps you have now produced?

A. Yes, sir.

The Master: These books will be considered in evidence.

Mr. O'Brien: I will ask your Honor if you 7964
are going to rule before we have a chance to examine some witness from the Tax Department to find what the figures mean, and what the red ink means, and what the various other notations made thereon mean.

Mr. Chambers: Should not the offer be for identification and then produce somebody to identify them?

The Master: I am receiving the following books in evidence, that show the various plots referred to, the pages, sheets and sections that cover the property referred to.

The book endorsed, "Section 4, Volume 2, 7965
Blocks 1050-1110, Manhattan." That will be deemed in evidence as Exhibit 210.

Tax map received in evidence and deemed marked Complainant's Exhibit 210.

The Master: The book endorsed, "Section 6, Volume 2, Blocks 1654-1716, Manhattan" will be deemed in evidence as Exhibit 211, in

7966 so far as it applies to the particular blocks and lots referred to.

Tax map received in evidence and deemed marked Complainant's Exhibit 211.

Mr. O'Brien: I have not caught either Judge Ransom's statement or yours, giving the reason they are offered and why they are admissible.

The Master: We will adjourn until 9:15 tomorrow morning.

Let it be noted that the testimony of the witness Donohue, the representative of the Tax
7967 Department, was received over the objection of Mr. O'Brien and other counsel for the defendants, repeating all of the grounds heretofore stated with reference to the testimony of Deputy Tax Commissioners, the objection having been overruled and exception allowed.

Adjourned to Friday, September 5, 1919, at 9:15 A. M.

Last Complainant's Exhibit 211.
Last Defendants' Exhibit U.

7968

CONSOLIDATED GAS COMPANY OF NEW YORK vs. NEWTON, ETC., *et al.* 7969

Before ABRAHAM S. GILBERT, Special Master

NEW YORK, September 5, 1919

Met pursuant to adjournment.

Present: MR. RANSOM, MR. VILAS, MR. GOETZ, of Counsel for Complainant
MR. CHAMBERS, of Counsel for defendant Newton
MR. HAYWARD, MR. CLARK and MR. NEUMANN, of Counsel for Public Service Commission 7970
MR. O'BRIEN, of Counsel for defendant Swann.

JAMES F. DONOHUE, resumed the stand:

DIRECT-EXAMINATION CONTINUED BY MR. RANSOM:

Q. Mr. Donohue, have you produced here to-day pursuant to the subpœna, Complainant's Exhibit 209, the other books containing the official block tax map for the Borough of Manhattan? 7971

A. I have, sir.

Q. Described in the subpœna?

A. Yes, sir.

Mr. Ransom: I was making up a list of this by books. I offer in evidence the portion of these maps which show in the book marked Section 7, Volume 3, Block 1998, Lots 50 and 57, Block 1999, Lot 1; in the book marked Section 8, Volume 1, Block 2108, Lot 23; in the book marked Section 6, Volume 2, Block 1683,

7972 Lot 18; in the book marked Section 6, Volume 1, Block 1642, Lot 33; in the book marked Section 4, Volume 2, Block 1028, Lot 38; Block 1089, Lot 1; Block 1092, Lot 7; Block 1092, Lot 38; Block 1092, Lot 38½; Block 1092, Lot 39; Block 1093, Lot 9; Block 1107, Lot 7; in the volume marked Section 4, Volume 1, Block 989, Lots 1 and 16; Block 991, Lot 1; Block 998, Lot 1; Block 991, Lot 47; Block 1028, Lot 37.

Mr. Chambers: While he is making that list, I don't know how it happened, but I do not find any objection—my objection to the map
7973 that was offered in evidence yesterday at the close of the hearing.

The Master: We will correct that. I was just looking at the record. Just let Judge Ransom complete his offer, then I will take any objection that might have been made yesterday to the two books that were received with the same force and effect as if it had been made yesterday before the reception in evidence.

Mr. Ransom (Continuing): In the book marked Section 4, Volume 3, Block 1107, Lot 7; Block 1177, Lot 21; Block 1157, Lot 1; and
7974 in the book marked Section 3, Volume 3, Block 870, Lots 47 and 60. Subject to just checking this over that is the offer.

The Master: Now, Mr. Chambers, you may make your objection to this offer and include in your objection the two map books that were offered yesterday afternoon, with the same force and effect as if they were all being offered now.

Mr. Chambers: I object to the introduction of the maps in evidence upon the ground that they have not been shown to be correct, and

they are incompetent, irrelevant and immate- 7975
rial, not properly proven, and they contradict or discredit complainant's own witness, Alrich, and have a tendency to impeach their own witnesses' testimony.

Mr. O'Brien: I object to the admission of these books, your Honor, on the ground they are incompetent, irrelevant and immaterial; that the witness is only a messenger in the Department, without any knowledge of the books except that he brought them from the department; that there is in the City Tax Department a surveyor who has technical knowledge of these maps, who has prepared 7976
them and altered them from time to time pursuant to the rules of the department, and who should be produced here not only to verify them but to state the meaning of the various figures and notations and dimensions on these maps. Further, on the ground that no opportunity, prior to the admission of the books, has been given us to catechise the witness as to the several pages of the books that have been received in evidence. On the further ground that the fact that certain assessments have been levied upon certain lots within the City of New York and that certain lots are noted 7977
upon the maps here does not make those admissible here. They do not add to this case, they do not prove the value of the property, they are not a chain or a link in the chain of proof of the ownership or the value of the complainant's property.

The Master: Col. Hayward, do you join in the objection?

Mr. Hayward: Yes.

Mr. O'Brien: Your Honor, I will ask now, appreciating that last evening near the end of

7978 the session we were hurrying to close up within the appointed time, that possibly your Honor proceeded to accept the books more or less peremptorily because of the approach to the end of the session, will your Honor permit us now to ask the witness some questions with reference to the manner in which these books were brought here, and how they are here?

(Discussion then ensued, which, by direction, is not reported).

The Master: President Cantor, of the Board of Tax Commissioners, has called to the attention of the Master the situation with reference
7979 to the short time within which Deputy Tax Commissioners still have to make their reports of assessments, which must be on file and sworn to before the first of October for the year 1920. The question is now presented as to how we can best handle the situation in the interest of all concerned.

Mr. Hayward: I want to say, if the Master please, that pursuant to our long wait since May 16th, and it seeming by assurances of counsel, and under the direct order of Judge Mayer, which ought to mean something in this case, that we will get an inventory between
7980 now and Monday, at which time it will certainly be necessary to take considerable time, whatever time the Master thinks advisable—I would suggest October 1st—for us to go over the property shown in this inventory, as we have been attempting to do, rather than this hop, skip and jump plan of trying a law suit that Judge Ransom has followed. I would therefore, say that we could kill two birds with one stone if this inventory is pursuant to order, filed by Monday. I do not know whether it will be or not, judging by the past, but then I am

going to ask for a continuance, in all good faith. Certainly it would be a reasonable proposition. That would help President Cantor out, and these people could do their work, and in the interim it would give us the time we need. We do not need to look up this real estate, but the plants I think we do, and those will be in this inventory. That will save the situation on both sides. 7981

The Master: Mr. O'Brien, do you want to say something?

Mr. O'Brien: Your Honor, I would like to ask permission to call Commissioner Cantor to the witness stand. 7982

The Master: For what purpose?

Mr. O'Brien: For the purpose of explaining on the record the situation in which the Tax Department is at the present time.

The Master: I think that is unnecessary. I think I have disclosed it fully on the record. The President's statement to the Court is that it will seriously inconvenience the department and be a serious detriment to the public if his deputies, now in Court, are kept here for several days, for an extended direct or cross-examination. We cannot have it any clearer than that.

Mr. Hayward: I suppose, then, that will mean we will skip back to another entirely foreign branch of this case. 7983

Mr. O'Brien: Then at this time, your Honor, I desire to have noted upon the record of this hearing the fact that the City of New York was not made a party defendant and that the complainant opposed the motion to have The City of New York given the right to intervene as a party defendant in this action; that the record discloses the fact that while various

7984 deputy tax commissioners of The City of New York were on their vacations, they were peremptorily subpœnaed into court here to testify as to assessed valuations, where their presence here could have been deferred to a time when they were not enjoying their vacations and to a time when they were not engaged, after their vacations, in the most important work of the year in the tax department of the City, that according to the statement of President Cantor of the Tax Department, the manner in which these witnesses have been brought, and their being brought here, has upset seriously
7985 the work of the Tax Department of the City, and that these conditions could have been foreseen and they only bring out the haste and the lack of consideration manifested all the way through this litigation by the complainant company, and the utter disregard of the rights of the City of New York.

I desire further to call to your Honor's attention that in the matter of the arrangement of the taking of testimony pursuant to the request made by Commissioner Cantor of the Tax Department the counsel for the defendants have not been asked by your Honor as to what
7986 is their convenience or wish in this matter. So that this should be noted on the record, as showing the absolute haste, the unwarranted rapidity with which this hearing is being peremptorily pushed to a conclusion.

Mr. Ransom: May I just say a word?

The Master: Mr. Chambers first.

Mr. Chambers: Of course, the defendant has asked repeatedly for a breathing spell in order that he might properly prepare the defense, which up to date has been denied, and we have not had the inventory, nor the other matters

that we asked for, in order to proceed to prop- 7987
erly prepare our defense.

Mr. Hayward: And that the Judge ordered given to us.

Mr. Chambers: And that the Judge ordered given to us. Now it is apparent that the complainant——

The Master: I asked you for a suggestion as to how to dispose of the situation.

Mr. Hayward: I made the suggestion.

Mr. Chambers: First of all I want to have it distinctly understood that after we get the inventory, a month will not do us to go over it, nor two months. Mr. Maltbie tells me it will 7988
take a long time, and I warn you that since May 16th you have known that we wanted this inventory, and we are going to have it, and we are going to ask for a sufficient time to properly appraise all this property.

The Master: That has nothing to do with what I am trying to settle now.

Mr. Chambers: I suppose the case might be adjourned to the 1st of October for the present.

The Master: All right, that is your suggestion.

Mr. Chambers: In the meantime we can begin on the inventory.

7989

Mr. Ransom: I wish to reply to statements which have been made by counsel. We offered before the trial of this case started to stipulate these values. We offered on the record in this case to stipulate these values——

The Master: Isn't all that in this record now? Why take up the time of the Court and public officials by repeating what is in the record?

Mr Ransom: You permit them to make long statements.

7990 The Master: Well, I couldn't stop them, but I thought I might be able to stop you.

Mr. Ransom: We offered to stipulate these values. We desired to save the presence and the time of these public employees. We tried for two weeks to get these men to the stand before we got any of them. We asked the representative of the Corporation Counsel in court to produce those whom we did not get at the start. There is no reason in the world why these men are here, and why time has been taken up, except the attitude of the defendant in this case.

7991 Now, so far as the future situation is concerned, we think that we should have the right to go ahead and put these witnesses on the stand, and not take the risk of their dying meanwhile. We have had some experience in that respect——

Mr. O'Brien: That is ridiculous, talking about the risk of dying.

The Master: Mr. O'Brien, please do not interrupt. I am going to insist on it. What is your suggestion, Mr. Ransom?

Mr. Ransom: My suggestion is that the witnesses be called and that their testimony be

7992 taken, and that the cross-examination be held to reasonable limits, and that they be permitted to go about their business.

Mr. O'Brien: Your Honor, I desire to be heard.

The Master: I will not hear any more.

Mr. O'Brien: I am going to interpose an objection.

The Master: I will not hear any more.

Mr. O'Brien: Does your Honor not permit me to make a statement on this record?

The Master: No.

Mr. O'Brien: I am going to record an ob- 7993
jection.

The Master: I will not allow you. I gave you an opportunity and I will not permit any more.

Mr. O'Brien: Your Honor, I am going to make an objection to the procedure.

The Master: (To the Stenographer). Do not take another word that is said here.

(Discussion off the record.)

The Master: The Court makes this statement: In view of the statement made by President Cantor, the Court directs that the direct testimony of these witnesses be taken; that the 7994
cross-examination be suspended until some future time to be fixed by the Court, all responsibility for the production of these witnesses for cross-examination to be with the complainant.

Mr. Hayward: That leaves us with all the risk that you have been talking about of something happening to these witnesses.

The Master: That leaves you with no risk at all, because I put the burden on the complainant.

Mr. O'Brien: But that does not guarantee their production. 7995

The Master: The law takes care of testimony that is taken on direct, where the witness fails to appear for cross-examination, and I am putting the burden and obligation on the complainant in that respect.

Mr. O'Brien: I respectfully record my objection to the arrangement now being made of giving the counsel for the complainant the privilege of calling a witness for direct-examination, and denying us the privilege of immediately thereafter proceeding with the cross-

7996 examination of the witness; that there is every evidence in this case that the counsel for the complainant is not prepared to go on with his case; that he is putting on witnesses and then requesting leave to take them off. I respectfully record my objection against these privileges being given counsel for the complainant, and I urge your Honor to reverse your ruling as to the arrangement of this testimony, and direct that the whole examination be deferred until some future date. It is a matter that can be supplied at any time. The assessments that have been made are made by the tax commis-
7997 sioners, and not by the deputy tax commissioners, and what has been proven through the deputy tax commissioners, might be proven through the tax commissioners themselves. So, if the examination is in part deferred, I respectfully urge that the whole of the examination go over.

Mr. Hayward: I want to add to that that by the Master's own policy laid down in this case, we did not have time for the cross-examination of any of these witnesses; we did not have an opportunity to take two days, or even one day to prepare ourselves for cross-examination, be-
7998 cause of the serious results that would occur in the Master's mind, and yet when the counsel for God Almighty comes here in the guise of this Company, and makes a request to have the examination deferred, it is granted.

The Master: Colonel Hayward, haven't I made it perfectly clear to you—if not I will try to make it clear now—that the law is that the party calling a witness must not alone produce the witness for the direct-examination, but must assume the responsibility of producing that witness for cross-examination.

Mr. Hayward: Certainly you have. 7999

The Master: That is, the law provides for the striking out of testimony if the witness is not produced for cross-examination, and that burden I am placing, in this instance, not on you, but on the complainant.

Mr. Hayward: The point I am making is——

The Master: Wait a minute. My ruling at the outset was that I would adjourn the cross-examination of any witness on the stipulation of counsel for the defendants that they assume responsibility for the witness' return, so that the complainant would not lose the benefit of the direct testimony. Now, in this instance I 8000 have tried to meet the situation as, I think, fairly half way, by letting them take this direct testimony, getting that on the record here, in order of proof——

Mr. Hayward: What order of proof does the Master refer to? Has there been any order of proof in this case?

The Master: The deputy tax commissioners are putting in their evidence now, and I would like to get all their direct in here, if possible. If a witness is not brought here for cross-examination when the time comes, there is a burden on the complainant, and he is subject 8001 to a motion to strike out the direct testimony. That is why Judge Ransom complains that I do not force you gentlemen to go on with the cross-examination.

Mr. Hayward: But you did.

The Master: No.

Mr. Hayward: Yes, but you did. In this expert testimony we have repeatedly asked time to go and look at the property.

Mr. Ransom: I object and except to your Honor's ruling.

8002 The Master: I know you do. I have disposed of the matter and the incident is closed Nothing is going to happen, because you will have your cross-examination.

Mr. O'Brien: I deny that nothing is going to happen, and I assert to you now that the manner in which this trial is being conducted is very much to the inconvenience and prejudice of the defendants, and that in this particular case the counsel for the complainant is being served.

The Master: I don't suppose you mean the statement you have just made in an offensive
8003 sense.

Mr. O'Brien: I do not mean it in an offensive sense. Your Honor has undertaken to convenience the tax department, but the result is that counsel gets his story in now on the record, and we are prevented from going on now in a connected way, when our minds are on the question of examining deputy commissioners, that is deferred as to us until some future time, and that is to our prejudice.

The Master: I have the situation clearly in mind, and I have disposed of it. I just want to finish what I was about to say. If I thought for one minute if what you said about serv-
8004 ing the complainant, was said in an offensive sense, I should insist on your returning from this cause, and on the Corporation Counsel assigning somebody else to it; but I do not think you meant it in any offensive sense, and I should be surprised if you did. I could not, however, let it stand on the record without some comment.

Mr. O'Brien: I say your Honor is trying to convenience the department, that has already been seriously inconvenienced by counsel for the complainant.

The Master: I cannot please everybody. 8005

Mr. O'Brien: But it is prejudicial to us. While we are examining deputy tax commissioners, I think we ought to be permitted to clear it up.

The Master: I appreciate that I cannot please everybody. I am trying to do the fair thing as I see it. I cannot always do it accurately or correctly, but I will do the best I can.

Mr. O'Brien: Your Honor knows that this matter can be deferred till a little later on.

The Master: No, I have disposed of it.

Mr. Hayward: I don't know whether you 8006
take what I say in an offensive sense or not. If you do, you will have to take it, but what I want on this record is that I, in my poor, humble way, cannot understand why it is so absolutely imperative for us to cross-examine witnesses for complainant immediately, and why it is not at all important when he does not want to have it done.

The Master: That is not so.

Mr. Hayward: It is so. The record shows repeatedly that we have requested time to prepare for cross-examination.

The Master: The offer has been made of 8007
these various books. I understand Mr. Chambers has made his objection.

Mr. Chambers: I would like to cross-examine the witness preliminarily as to his knowledge.

The Master: That was the application Mr. O'Brien made, asking permission to cross-examine, which I won't give at this time.

Mr. O'Brien: Your Honor perhaps misunderstands me. It was not a matter of cross-examining the witness that I requested the privilege of doing, but it was the matter of

8008 asking him some questions preliminary to the objections to be made to these books.

The Master: I will not allow it. I remember your point, and I remember your statement. I deny your application to examine this witness at this time.

Mr. Ransom: The books are self proving public documents.

Mr. O'Brien: I take an exception to your Honor's ruling, and I also note on the record an exception, with due respect to your Honor's ruling as to the taking of the testimony of witnesses in the direct and deferring the cross-
8009 examination until some definite future time.

Mr. Clark: I wanted to add to the objections already made, that these books are presented to prove the property which is assessed for taxation, and it appears from the testimony of the Deputy Tax Commissioners that the assessments were made on their field books, but there is no proof in this case that the field books correspond with the books which are now offered in evidence.

The Master: The objections are overruled, the various volumes, or at any rate so much of the volumes as indicate these various lots
8010 and blocks will be received in evidence in the order of their offer.

Mr. O'Brien: Do we understand these books are being received with the limitations put upon the other yesterday, simply and solely for the purpose of identifying in the tax maps the various plots that are assessed?

The Master: That is all.

Mr. O'Brien: And not as in any way proving ownership or use for gas making purposes?

The Master: Yes, that is correct.

Mr. O'Brien: Or the reasonable necessity of 8011
such property for gas making purposes?

The Master: The only theory on which I have let them in was this, that the various witnesses have referred to block and lot numbers, that Mr. Chambers has brought out from their cross-examination various dimensions of the lots to which they testified, and the record is not clear except by analysis as to the dimensions of the various lots. I felt it would be a convenient thing in the record to have these maps in giving these various dimensions to which the witnesses have already testified, that is all, and that is the only purpose of it and it proves 8012
nothing else, and it cannot prove anything else. The next volume that is offered is the volume endorsed how?

Mr. Ransom: Section 7, Volume 3.

Section 7, Volume 3 received in evidence as Complainant's Exhibit No. 212.

Section 8, Volume 1 received in evidence as Complainant's Exhibit No. 213.

Section 6, Volume 2 received in evidence as Complainant's Exhibit No. 214.

Section 6, Volume 1 received in evidence as Complainant's Exhibit No. 215.

Section 4, Volume 2 received in evidence 8013
as Complainant's Exhibit No. 216.

Section 4, Volume 3, received in evidence as Complainant's Exhibit No. 217.

Section 3, Volume 3 received in evidence as Complainant's Exhibit No. 218.

Section 4, Volume 1 received in evidence as Complainant's Exhibit No. 219.

Section 5, Volume 4 received in evidence as Complainant's Exhibit No. 220.

Section 3, Volume 4 received in evidence as Complainant's Exhibit No. 221.

8014 Section 1, Volume 2 received in evidence as Complainant's Exhibit No. 222.

The Master: Mr. Ransom, I shall direct you as counsel for the complainant to arrange with President Cantor of the Tax Department for the making of photographic reproductions of the various pages containing the blocks and lots referred to in your offer, so that they may be physically marked in evidence in the case.

Mr. Ransom: I will take that up with President Cantor at once.

The Master: If President Cantor will not permit photographic copies to be made, then
8015 you will have drawings or tracings made of them, so that they can be marked in evidence here.

Mr. O'Brien: I have been wondering right along why counsel has gone to all this trouble with its consequent interference with the Tax Department. Bromley's maps will serve his purpose just as well.

The Master: Bromley's maps are not up to date, and these are testified to be up to date. I would not take Bromley's maps.

Mr. O'Brien: As showing lot and block numbers.

8016 The aMster: No. I had occasion to look at Bromley's day before yesterday, for private purposes, in preparing a lease, and I had to send a surveyor up to make the survey, I could not depend upon Bromley's. I will ask Mr. Donohue to step aside and suspend his examination until I take the rest of the deputy tax commissioners.

HERMAN J. LEVY, called as a witness on behalf 8017
of the complainant, being duly sworn, testified as follows:

The Master: Where do you live?

The Witness: 512 Eastern Parkway.

DIRECT-EXAMINATION BY MR. RANSOM:

Q. What is your position with The City of New York?

A. Deputy Tax Commissioner.

Q. How long have you been such?

A. Since 1911.

Q. Did you take a civil service examination preliminary to being appointed to your position? 8018

A. Yes, sir.

Q. You took a competitive examination concerning your qualifications?

A. Yes, sir.

Q. And you passed that examination?

A. Yes, sir.

Q. As a result of that examination there was created an eligible list?

A. Yes, sir.

Q. And you were on that eligible list?

A. Yes, sir.

Q. And you were appointed from that eligible list? 8019

A. Yes, sir.

Q. And before entering upon that position as deputy tax commissioner, you took the usual oath of office?

A. Yes, sir.

Q. Before you became a deputy tax commissioner, what was your work or position?

A. I had been in the real estate and building business since 1892.

Q. Bought and sold real estate?

8020 A. Yes, sir.

Q. Acted as broker in the buying and selling at times?

A. Both as broker and for myself.

Q. In the year 1918, prior to October 1, on what district were you working as deputy tax commissioner, and what were the boundaries of that district?

A. It was the district which was comprised of the territory lying between the north side of 96th Street running from the East River west to the east side of Fifth Avenue; north on Fifth Avenue to
8021 the north side of 110th Street, to the east side of Lenox Avenue, north on Lenox Avenue to the south side of 110th Street, east on the south side of 118th Street to the east side of Park Avenue, north to the Harlem River, known as Section 6.

Q. In September 1918 before October 1, 1918, did you make up and furnish to the Tax Board a detailed statement sworn to under oath by you concerning the taxable property in the district?

A. I did, in the form of what is known as our annual record.

Q. It showed each separately assessed parcel?

A. Yes, sir.

8022 Q. You have personally visited and examined each parcel before you assessed it?

A. Yes, sir.

Q. And you so showed in your annual report or assessment to them?

A. Yes, sir.

Q. And you showed some for which in your judgment each separately assessed parcel would sell if wholly unimproved?

A. Yes, sir, as well as improved.

Q. You showed two columns?

A. Yes, sir. 8023

Q. One the value of the land if wholly unimproved and the second column the value with improvements?

A. Exactly.

Mr. O'Brien: I do not know that Judge Ransom has that technically right when he says, "if wholly unimproved".

The Master: That is the language of the charter.

Mr. O'Brien: They simply take it without improvements.

Mr. Ransom: I am using the language of the 8024
statute.

The Master: He is using the language of the charter or statute. If he is not stating it correctly the witness should correct it.

Q. There is no doubt, is there, Mr. Levy, that in the first column you have stated the sum for which in your judgment each separately assessed parcel of land would under ordinary circumstances sell if it were wholly unimproved?

A. Yes, sir.

Q. As of the time of the making of this sworn report?

A. Yes, sir. 8025

Q. And that was the report which you made for the 1919 taxes?

A. Yes, sir.

The Master: In that report you put the figures that represented your judgment as to the value?

The Witness: Exactly.

Q. And you swore to that before a Justice of the Supreme Court, in pursuance of your official duties?

8026 A. Yes, sir.

Q. Now, referring to Block 1642 on the tax maps of the City of New York for 1919, Lot 32, what in your judgment was the sum for which that parcel of land would sell under ordinary circumstances as wholly unimproved, this being the property at the northwest corner of Third Avenue and 114th Street, formerly Lots 32 and 33, and I believe now shown on the 1919 map as Lot 33?

The Master: Mr. O'Brien repeats the same objection to this line of testimony?

Mr. O'Brien: The same objection, and all of

8027 the objections I have made to the testimony of the other deputy tax commissioners, who have testified in this hearing.

The Master: Mr. Chambers makes the same statement?

Mr. Chambers: Yes.

The Master: And Mr. Hayward makes the same statement?

Mr. Hayward: Yes.

The Master: The objections are overruled; exceptions allowed. The witness will answer.

A. May I be permitted to refer to my field book?

The Master: Certainly.

8028 Q. Your field book and field map. That is, you have a field book which was used by you at that time?

A. Yes, sir.

Q. And you have a field map showing the block numbers, of the Department of Taxes and Assessments, for that area or district?

A. I have. Lot 33, Block 1642, the land was assessed for that year——

Mr. Chambers: He said lot 32.

The Witness: 32 and 33 were merged in 1918, the year previous.

Mr. Chambers: The question was as to lot 8029
32.

Mr. Ransom: I changed it to lot 33, the 1919 number.

The Witness: $48,000.

Q. That is prior to 1918 there had been lots 32 and 33?

A. Yes, sir.

Q. And in 1918 those lots were merged on the tax map or block map of the Department, and became lot 33?

A. Yes, sir.

Q. This figure of $48,000 stated by you is the 8030
figure sworn to by you as to lot 33?

A. Yes, sir.

Q. That is at the northwest corner of Third Avenue and 114th street?

A. Yes, sir.

Q. Block 1670, lot 1, located on East 98th street and East 99th street, First avenue to Second avenue. What similarly, was your opinion and figure as to that parcel of land, if it were wholly unimproved?

Mr. O'Brien: The same objections.

The Master: The same objection, same 8031
ruling. That is the same objection by all counsel and the same ruling.

A. $630,000.

Q. Similarly as to block 1692, lot 1, land located at 98th to 99th streets, First avenue to the marginal street. What was your opinion and your figure concerning that parcel?

A. $245,000.

Q. That is the value if wholly unimproved?

A. Value of the real estate unimproved.

Q. Referring to block 1682 located on the north

8032 side of East 110th street, between First and Second avenues, what was your opinion and your figure as to that?

Mr. Chambers: What lot number?

Mr. Ransom: Lot 8, block 1682.

A. I think you are wrong on your lot. You probably mean lot 11.

Q. Well, there is a Lot 11. Is that 8 yours, too? We do not show that ownership here?

The Master: Just give us the answer as to what in your judgment Lot 8 was worth.

The Witness: $10,000.

8033 Mr. Chambers: Lot 8, have you that?

The Witness: Yes, we have a lot 8.

The Master: The witness' hesitation was due to the fact that he carries the lot in the name of some other owner.

Q. And now Lot 11 of Block 1682, what was your opinion and your figures as to that?

A. $455,000.

Q. That is Lot 8 and 11 together are $455,000?

A. Yes, sir.

Q. Now as to Block 1704, Lot 5, East 110th Street to East 111th Street, west of Pleasant Avenue, what in your judgment was the sum for which

8034 that Lot 5, Block 1704 would sell if wholly unimproved?

A. What lot did you say? Lot 5?

Mr. O'Brien: Same objections.

The Witness: $355,000.

Mr. O'Brien: Your Honor recorded the same objections?

The Master: Yes, certainly. It will not be necessary to repeat the same objection and exception as to this witness. They are all taken subject to the objections.

Q. Block 1712, located on Pleasant Avenue, what was your opinion and figure as to that? 8035

A. $52,500.

Q. Was that the bulkhead property?

A. It is land under water, yes.

Q. Similarly as to Lot 18, Block 1683, the northwest corner of First Avenue and 111th Street; what was your opinion and figure as to that?

A. $80,000.

Mr. Ransom: That is all.

The Master: Do counsel for the defendants want to cross examine this witness?

Mr. Chambers: Do we want to? Yes, most assuredly—at length. 8036

The Master: I will suspend the cross examination in line with the statement heretofore made, the responsibility for producing the witness being with the complainant.

Mr. Ransom: That is over the objection and protest of the complainant and exception.

The Master: Yes.

Mr. Chambers: I would ask Mr. Levy to tell us who he had down as the owner of Lot 8, Block 1682. That will only take a second.

The Witness: These names are never considered official in our Department. 8037

Mr. O'Brien: I note my objection to the arrangement for the cross examination of the witness. I understand counsel for the complainant to object?

Mr. Ransom: I certainly do, both object and protest.

The Witness: George M. Bradish Estate.

The Master: When will you be finished with your field work?

The Witness: Not until about the first of October.

8038 The Master: You are swearing to your books the first of October, are you not?

The Witness: No; about the 28th or 29th, usually.

The Master: So that you will be finished after the end of this month?

The Witness: Yes, that is what I am saying.

The Master: I will direct that the witness come back here on the first of October for cross-examination.

Mr. Ransom: That is over our objection and exception.

8039 The Witness: You mean without further subpœna?

The Master: Yes, the first of October, at 9:15 in the morning.

Mr. Chambers: I have to argue a case on that day, and I will have to ask to get off.

The Master: We will leave the date open, and I will direct counsel for complainant to call the matter to the attention of the Master about the end of September, when we will arrange a date. Now, the other gentleman is Mr. Tracey?

Mr. Ransom: The difficulty is that he has
8040 not produced his books here. He has sent over to the Department for them.

The Master: Then I think that is all we can do, to wait.

JAMES F. DONOHUE, resumed the stand.

CROSS-EXAMINATION BY MR. CHAMBERS:

Q. Is Mr. Henry W. Vogel in your department?

A. Yes, sir.

Q. Is he there now?

A. He is the city surveyor, yes, sir.

Q. You know his signature, do you? Is that his 8041
signature? (Showing Exhibit 210.)

A. Yes, sir.

Q. You do not know anything about the dimensions of these lots?

A. No. The lot is the red number.

Q. You never surveyed them in any way?

A. No, sir.

Q. And you were not with the surveyor when he surveyed them?

A. No, sir.

Q. And you know nothing about them, do you?

A. Only that they are official and kept there for 8042
the public.

Q. They are open to the public inspection, are they?

A. Yes, sir.

The Master: With custodians watching them?

The Witness: Yes, sir.

Q. You work for the city, don't you?

A. Yes, sir.

Q. And these are city records?

A. Yes, sir.

Q. Records of The City of New York?

A. Yes, sir. 8043

Q. Have you any other knowledge about them except what you have just stated?

A. No, I have not.

Q. How long have they been there?

A. You will have to ask somebody that is there longer than I am.

Q. Are they changed from time to time?

A. Yes, sir.

Q. Who makes the changes?

A. Mr. Vogel supervises it. He has lots of draughtsmen under him.

8044 By the Master:

Q. What you have just said about this book applies to all of these books?

A. Every one of them.

Q. All you know about it is that you are the messenger in the department?

A. Yes, sir.

Q. And they are kept there for public inspection?

A. Yes, sir.

Q. And these are produced under subpœna?

A. Yes, sir.

8045 By Mr. Chambers:

Q. These seem to have been certified to on November 13th, 1895. You haven't any other or later ones?

A. None whatever. Whatever applications are brought in for new buildings or alterations are referred to those books.

Q. So that changes have been made in these records, speaking of this Exhibit 210, since it was certified on November 13th, 1895?

A. Yes, sir, they are marked in when they are changed.

By the Master:

8046 Q. They put the date in when they are changed?

A. Yes, sir.

Q. So the date appears on every change?

A. Yes, sir.

The Master: Do you understand the system, Mr. Chambers?

Mr. Chambers: I would like to add to my objection further that this public record was certified on November 13th, 1895, and has been altered since that time without an additional certification.

The Master: Your further objection is over- 8047
ruled.

Mr. Chambers: That is all.

The Master: Mr. O'Brien, do you want to ask Mr. Donohue any questions?

Mr. Chambers: I should like to cross-examine Mr. Vogel, but of course this witness doesn't know anything about it.

CROSS-EXAMINATION BY MR. O'BRIEN:

Q. Mr. Vogel has been in the department for some time, Mr. Donohue?

A. Thirty odd years.

Q. Is he still there?

A. Yes, sir. 8048

Q. He is not on his vacation?

A. No, he is there.

Q. He is present every day in the Tax Department?

A. Yes, sir.

Q. And he has the exclusive charge of the changing of the maps from time to time?

A. Yes, sir.

Q. Your duties do not bring you in contact with the maps, except to deliver them?

A. To put them on the counter in the morning, and put them away in the evening. 8049

Q. You did not previously at any time work in the Department in any other capacity?

A. No, sir, not in that department.

Q. I show you Mr. Donohue, the first page of this Section 4, Volume 2, blocks 1050 to 1110, Manhattan, and I call your attention to the names of the Commissioners, P. E. Barker, Theodore Sutro, and James L. Wells. You were not connected with the Department at that time?

A. No, sir.

8050 Q. You don't know their signatures?

A. No, sir.

Q. Do you know whether Mr. Sutro is living?

A. No, sir.

Q. Or Mr. Barker?

A. No, sir, I don't know.

Q. You do not know the rules or regulations relating to the work of Mr. Vogel in reference to these maps?

A. No, I do not.

Q. Are there other copies of these maps in the office? Does the Department keep these in duplicate or triplicate?

8051 A. Only the bound copy, the small one that is used in the field. They are the only two copies.

Q. How many of these did you bring to-day under subpœna?

A. Eleven.

Q. Do they cover all of the Borough of Manhattan?

A. Yes, all the blocks that were asked for.

Q. You brought eleven, and they cover all of the Borough of Manhattan?

A. Yes, sir.

Q. How many days have you been in court now?

8052 A. Three days this time.

Q. This makes the fourth day you have been here?

A. Yes, sir.

Q. And you had some of the maps here yesterday, and some on other days?

A. Yes, sir.

Mr. O'Brien: Your Honor, I move to strike out the testimony of these maps, on the ground that it appears now that there is a witness available across the Park, in the Municipal

Building, Mr. Vogel, the Surveyor, who has 8053
technical knowledge of these maps, and who could verify the changes that have been made since they were certified by the Commissioners in the year 1895, and who could tell us the methods of keeping the maps, and if there are any unexplainable notations made thereon, he might explain them, and in that way give us precise knowledge of the dimensions on these maps. In connection with my objection I call your Honor's attention to the confusion that has been produced in the first instance by taking the maps of the witness Alrich, where 8054
we were for the time asked to assume that they were correct dimensions, and then found since that they are very faulty.

The Master: Motion denied.

Mr. O'Brien: And I think that without the explanation of the witness Vogel, which need not be very lengthy these are not admissible for the purposes for which they are received.

The Master: Motion denied. Any questions, Col. Hayward?

Mr. Hayward: No, sir.

The Master: Mr. Clark?

Mr. Clark: No, sir. 8055

(Witness excused.)

JOHN F. TRACEY, called as a witness in behalf of the complainant, being first duly sworn, testified as follows:

DIRECT-EXAMINATION BY MR. RANSOM:

Q. Where do you reside, Mr. Tracey?

A. 225 East 17th Street, Manhattan.

Q. What is your position with the City of New York?

8056 A. Deputy Tax Commissioner.

Q. How long have you been such?

A. Since 1898.

Q. You took a Civil Service examination for that position?

A. I did.

Q. Prior to your appointment?

A. I did.

Q. That is an examination was prescribed regarding the qualifications of candidates or applicants for the post?

A. Yes, sir.

8057 Q. And as a result of that examination, your name appeared upon an eligible list?

A. It did.

Q. And you were appointed from an eligible list?

A. I was.

Q. And you took the usual oath of office thereafter?

A. I did.

Q. Before you became a Deputy Commissioner, what was your business or employment?

A. Superintendent of the improvement of fireproof material for building purposes.

8058 Q. In connection with real estate matters?

A. Yes, sir.

Q. In the year 1918, prior to October 1, were you assigned as a Deputy Tax Commissioner to any particular district, and if so, what were the boundaries of that district?

A. I was. The boundaries of the district were, bounded on the south by 40th Street, on the north by 79th Street and on the west by the Hudson River.

Q. In the month of September, 1918, or before

October 1, 1918, did you make up and furnish to 8059
the Tax Board a detailed statement under oath, or annual report showing all the taxable property assigned to you?

A. That is real estate?

Q. Yes, real estate.

A. I did.

Q. And you have personally examined each of those parcels of property?

A. I did.

Q. And you showed in your annual report that you had so examined these parcels?

A. I did.

Q. And in this report you showed in separate 8060
columns, in the first column a sum for which in your judgment each separately assessed parcel of real estate would sell under ordinary circumstances if it were wholly unimproved; and in the second column the value with improvements?

A. I did.

Q. And before you furnished to the Tax Board this annual report or statement, did you swear to it in the oath in the usual form, before a Justice of the Supreme Court?

A. I did.

Q. Directing your attention to Block 1090, Lot 8061
23, land located on the north side of 42nd Street between Eleventh and Twelfth Avenues, what in your opinion was, on October 1, 1918, the sum for which this parcel of land would, under ordinary circumstances, sell, if it were wholly unimproved?

Mr. O'Brien: Same objections will be recorded, your Honor, with an exception.

The Master: Yes, certainly.

The Witness: The value of the unimproved land is $82,500.

8062 Q. And that sum represented your judgment and also was the figure which you certified to the tax for it?

A. It was.

Q. Similarly, what was your opinion and figure as to Lot 1 of Block 1089, land 41st to 42nd Streets, Eleventh Avenue to Twelfth Avenue?

A. The value unimproved?

Q. Yes.

A. $900,000.

Q. Now similarly what was your opinion and figure as to Lot 7 of Block 1107, land at 41st to
8063 42nd Street, from Twelfth Avenue to the North River, including the bulkhead and pier, the value if it were wholly unimproved?

Mr. O'Brien: I make the same objection, your Honor, now, that I did to the receipt of the testimony of the other deputy tax commissioners in this hearing; and I make a further objection that Lot 7 on this map is shown to include more property than is included in the diagrams of the witness Alrich or the deeds of the complainant company.

The Master: Objection overruled.

Mr. O'Brien: Exception.

8064 Q. What is your figure as to that property?

A. $375,000, unimproved.

Mr. Chambers: $375,000.?

The Witness: $375,000.

The Master: To explain my ruling, I am taking the tax records for what they may be worth when they are compared with other testimony in the case, simply for the purpose of identifying the figures given. In other words, I am taking the tax figures as testified to sub-

ject to comparison and further objection on 8065
other grounds when analyzed and discussed.

Q. What sum was your opinion and your figure as to Lot 9, Block 1093, 45th to 46th Streets, east of Twelfth Avenue?

A. $260,000. for unimproved.

Q. Lot 7, Block 1092, on the tax map of the City of New York, what similarly was your opinion and figure as to the sum for which it under ordinary circumstances would sell if it were wholly unimproved?

A. $400,000.

Mr. O'Brien: $200,000?

The Witness: $400,000. 8066

Q. Now as to Block 1177, Lot 21.

Mr. O'Brien: The same objection, of course, to all these questions, your Honor.

The Master: Yes.

Mr. O'Brien: With an exception?

The Master: Yes.

The Witness: Unimproved $265,000.

Mr. Chambers: How much?

The Witness: $265,000.

Q. What similarly was your opinion and figure as to Lot 1 of Block 1157, west 65th to west 66th Street, Amsterdam Avenue to West End Avenue? 8067

A. $815,000. unimproved.

Q. Lot 38, Block 1028, south side of West 57th Street between Seventh Avenue and Broadway?

A. The unimproved value $410,000.

Q. $410,000.?

A. $410,000.

Mr. O'Brien: You are certain of that, Mr. Tracey, $410,000.?

The Witness: $410,000. There may be a

8068 question in that, Mr. O'Brien. I see the assessed figures here for 1920.

Mr. Chambers: $400,000., aren't they?

The Witness: $400,000. in one column and $410,000. in another. You see, these books have been out of my possession since April 1st, 1919.

The Master: You are in another district?

The Witness: I am in Jamaica, in Queens; so that there may be changes in these books, because they are all penciled.

Mr. Chambers: On 1919?

8069 The Witness: Yes, there may be without my knowledge.

Mr. Chambers: And they would have both figures then?

The Witness: Well, you could not tell.

The Master: In your 1919 column do you recognize your figures?

The Witness: Well, I could not tell whether there has been a change.

The Master: No, but do you recognize your handwriting?

The Witness: The total of the assessment I would, but not for the land value. The land

8070 value is carried over, you see, in one column, and if they change that amount after two years, then they rub out, and then they put that in. The records of the total improved run for six or seven years.

The Master: Are the figures of the land value in 1919 in your handwriting?

The Witness: 1919 would look like 400,000.

The Master: Is it your handwriting?

The Witness: Well, I could not swear to that.

Mr. Chambers: Shall I put it down 400,000? 8071

The Master: No, wait a minute.

Mr. Chambers: You gave it to us as 400,000.

The Master: Wait a minute. Perhaps the witness cannot tell what his judgment was, if he cannot refresh his recollection. Would this record refresh your recollection?

Mr. O'Brien: You have not identified it.

The Master: He don't have to.

The Witness: That is not my handwriting.

Mr. Chambers: Does that refresh your recollection?

The Witness: This does here now. I see 8072
400,000. for 1919 and 550,000. for the total. Now I see for 1920 410,000. and 560,000. for the totals, which was made by somebody else.

The Master: What I want to get at, Mr. Tracey, is not what is in your books so much, because that is only to help you refresh your recollection, having looked at your book, and having studied it. Now, could you tell us under oath what was the value of this property unimproved in 1919?

The Witness: 400,000.

The Master: 400,000?

The Witness: Yes. 8073

Mr. O'Brien: Did you say they rubbed them out every two years?

The Witness: Yes, but we use the same book.

Mr. O'Brien: You used the same book?

The Witness: We used the same book.

Mr. O'Brien: And you used the rubber?

The Witness: You use the rubber, providing you change your opinion as to land values. There may be another deputy in the district

8074 and his opinion may be different from the man who made the assessment a year ago.

Mr. O'Brien: All these notations are in pencil.

The Witness: All in pencil.

Q. Mr. Tracey, referring to Block 1092, Lot 7, property from 44th to 45th Streets, between Eleventh and Twelfth Avenues, in arriving at the figure which you have given upon what basis did you compute the value of that property?

Mr. O'Brien: The same objection.

The Master: The same ruling.

8075 Mr. O'Brien: And the further objection that the question is not clear and it may call for a legal conclusion.

The Master: We will see. It is overruled for the time being. How did you arrive at that figure?

The Witness: Which figure?

The Master: The figure which you have.

The Witness: The land value?

The Master: Yes.

The Witness: By figuring so much a front foot and adding plottage.

Q. What per front foot did you figure, and on
8076 what streets?

A. On Eleventh and Twelfth Avenues, 516 on 44th Street. An irregular shape.

The Master: How much per front foot on Eleventh Avenue?

Q. Take your map and show it.

A. This map will not show the unit that I used. The field map is what has the units that we applied.

The Master: You have not got your field map here?

The Witness: No, sir.

The Master: Then you cannot tell us the units? 8077

The Witness: I cannot tell it by that map.

The Master: Then there is nothing in court that will help you?

The Witness: No, sir.

Mr. Chambers: There is a radical variance between the pink map and the official map.

Mr. Ransom: Unfortunately the City took a large part of it by condemnation.

The Master: I have heard about those variances. It is something to be cleared up on the record.

Mr. Ransom: The changes are in evidence. 8078

Mr. Chambers: But this lot 7 that he gave you the value on is must larger——

The Master: He says he cannot give us the units.

Q. Can you give us the units that you used?

A. I cannot without the field map. I can give you the area from that map and tell you where I fixed the units.

The Master: But you cannot tell us the units?

The Witness: I cannot tell you the units that were used. 8079

Mr. O'Brien: Could you call them out of your memory, Mr. Tracey?

The Witness: Why, no.

Mr. O'Brien: You were on this block for years, weren't you?

The Witness: Just for one year, no.

Mr. O'Brien: Only for one year?

The Witness: That is all.

Q. What can you tell me as to the basis of your computation and your dimensions?

8080 A. 516 feet 3 and 7/8 on West 44th street and 430 feet 0 3/4 nches on 45th street.

Mr. O'Brien: You are reading something that is scratched out.

The Witness: Mr. O'Brien, I will show you it. If you will just look——

Mr. Ransom: Let us get this on the record. Let Mr. O'Brien defer his cross-examination now.

The Master: Let the witness show you the figures.

The Witness: The parts that Mr. O'Brien
8081 questions here as 390, where he says 430 is stricken out, it is made into two parcels by the surveyor, making 390 in one, and the dotted proposed street, and the other difference that goes into it is 430, which he claims is stricken out.

The Master: Do not worry about what Mr. O'Brien claims.

The Witness: I am not worrying about Mr. O'Brien.

The Master: What we are trying to get at is the dimensions of the lot.

The Witness: On 45th street 430 feet 0 3/4.

8082 Q. And what on the other streets?

A. On 12th avenue, 204.01.

Q. And on 44th street?

A. I gave you that. 516 feet, 3 7/8.

The Master: Did it run to 11th avenue?

The Witness: No, sir.

Q. What on 45th street?

A. I gave you that.

Mr. O'Brien: When you say 516 feet 3 7/8, you are reading a number that has been scratched out.

The Witness: It has been scratched out be- 8083
cause it is divided for the two parcels, making 480 in one and the difference in another. You asked me the question what amount or area I assessed on Lot 7, so I am giving you the number of feet. The two parcels combined make the amount I say.

Mr. O'Brien: These numbers are put in new to give the new dimensions, or in different colors than the other numbers?

The Witness: Different inks; it is different for the year it is put in.

Mr. O'Brien: They use different ink for 8084
each year?

The Witness: Yes, so it can be detected in the searches and apportionments on the map.

Mr. O'Brien: You have searchers there to look these things up?

The Witness: For the other departments; the Comptroller's office and the like of that.

Q. What about Block 1093, what were the dimensions which you used for that?

The Master: Give us the dimensions of the property you appraised and the figure that you gave.

A. 369 feet 2¾, on 45th Street and 265 feet 8085
6¼ on 46th Street.

Mr. O'Brien: Both of those numbers are scratched out on the map, are they not?

The Witness: Yes, sir. I do not make up that area from scratched out numbers. I make up that area from numbers shown on the map, and two parcels on 46th Street, one dimension is 250 and a proposed area of a street line of 15 feet 6¼ makes 265 feet 6¼.

8086 The Master: They total up the figures that you have given.

The Witness: Yes, sir.

The Master: And the figures that are scratched out?

The Witness: Yes, sir.

Mr. O'Brien: Add them up, Mr. Tracey. Add them up, do not take it for granted.

The Witness: Well, I do every time I give you an answer.

Q. Did you assess this lot or block 1093 on a frontage basis?

8087 A. Did I assess it?

Q. Yes, on a frontage basis?

A. Yes, sir.

The Master: You took a unit of value on this street frontage but you cannot tell us what those units were.

The Witness: Not from this map; no, sir.

Q. And you added plottage?

A. I added plottage.

Q. Since you made the 1919 assessment there has been a change in the map in that respect, in respect to the divisions in the lots or parcels?

A. No.

8088 Mr. Ransom: I think on that phase I will have to reserve the direct examination of the witness until he comes here again.

The Master: Then you are not through with your direct?

Mr. Ransom: I think not, no.

The Master: As to this witness Mr. Ransom is not yet finished with his direct, so I need make no direction about the cross.

Mr. Ransom: But as to your Honor's direction that I should subpœna this witness for

the next hearing. We, of course, have sub- 8088
pœnaed those papers, but due to the fact that Mr. Tracey was off the district, I take it they were not at the time under his control, so that the field map and the field book were not produced. We were able this morning after Mr. Tracey came to court to obtain the field book for this district, but not the field map. Mr. Strobel, I think, is now on this district and we could not get it.

Mr. O'Brien: It only shows the case coming in in a fragmentary and disjointed way.

Mr. Ransom: I dislike it more than you do. 8090

The Master: I will not make a direction at this time.

The Witness: With reference to the time that I would be subpœnaed, it was me that brought President Cantor over here to explain the situation out in Jamaica and the Borough of Queens. I have the largest section out there, about five hundred buildings. I have got to be completed by the first of October, but after the first of October there are continual apportionments in the map numbers and I could not be here no more than I could be now, without neglecting the business of the City. So if you 8091
set it back as long as you possibly can, until those apportionments are made, it would satisfy me.

The Master: We will do the best we can.

Mr. Chambers: Say the first of December?

The Witness: Well, any time. I prefer if I could now to go right straight through with it.

Mr. Ransom: Will you go over and get your field maps and come back?

The Witness: I cannot.

Mr. O'Brien: Mr. Tracey, when were you subpœnaed?

8092 The Witness: Last night at half-past nine.

Mr. O'Brien: Taken out of bed?

The Witness: Well, I was about to get to bed. The two subpœna servers climbed over the fence, and of course, I could not get near the revolver until they got into the house. If I could, they would not get me.

Mr. O'Brien: Did they tell you, Mr. Tracey, who they were?

The Witness: No; they asked me my name.

The Master: I will ask President Cantor to arrange for the attendance of this witness. I think under the circumstances, Mr. Tracey, and
8093 in view of your statement, I will have to hold you here.

The Witness: To-day?

The Master: Yes; you will have to send for your field book, and when it comes we will finish your cross-examination. Tell President Cantor I had to modify my ruling in view of your statement.

The Witness: I would not be able to give you an answer as to the units.

The Master: Tell President Cantor when you go back, that you made the statement in Court you would not get here again, and under
8094 the circumstances I felt it my duty to keep you here.

The Witness: No, I did not state that.

Mr. O'Brien: He referred to the manner in which he was subpœnaed.

The Witness: This gentleman (indicating) said, "That is the only way we can get you." I says, "You can never get me again, to climb over the fence into the house."

The Master: Do I understand, Mr. Tracey, you will be subject to my call if I notify the President to get you?

The Witness: Certainly, sir, but that remark 8095
was made to me by Mr. Goetz as I was passing out.

JOSEPH M. FOLEY, called as a witness on behalf of the complainant, being duly sworn, testified as follows:

DIRECT-EXAMINATION BY MR. RANSOM:

Q. Where do you live?

A. 2020 East 14th Street, Brooklyn, New York.

Q. What is your connection with the Bronx office of the Department of Taxes and Assessments?

A. Clerk. 8086

Q. Who is in charge of that office, or who is your immediate superior in that office with respect to records?

A. Michael Kingsley, the deputy in charge of the department.

Q. Did some one in the department turn over a subpœna which had been served on that office?

A. Yes, sir.

Q. Who was it?

A. Michael H. Kingsley, deputy in charge.

Q. Have you that subpœna here?

A. Yes, sir.

Mr. Ransom: I offer in evidence the sub- 8097
pœna produced by the witness.

By Mr. O'Brien:

Q. Have you been paid your fees?

A. I was paid the fees for one day, two dollars and a half. I have been here three days.

Q. Were you paid any car fares?

A. No, sir.

Mr. Ransom: I object to the interruption of the examination by counsel. He never permits any examination to proceed. His whole method

8098 is a denial of the kind of trial that this co
plainant is entitled to have in this court.

Subpœna received in evidence and mark
Complainant's Exhibit 223.

By Mr. Ransom:

Q. Pursuant to this subpœna have you produc
in court the official block tax maps of the Bro
office of the department, covering the blocks
ferred to therein?

A. Yes, sir.

Q. Where are they?

A. On the desk there.

8099 C. Covering property in Blocks 2583 and 3236
A. Yes, sir.

Q. Are these books which you have produced t
official block tax maps of the department?

A. Yes, sir.

Mr. Ransom: I offer in evidence so much
these books produced by the witness pursua
to this subpœna, as follows: As to the bo
marked, "Section 10, Volume 2" of the Bro
so much of it as shows Lot 360 of Block 25

The Master: That will be received in e
dence over the same objections as heretofo
made to the books of the Manhattan office.

8100 Book received in evidence and marke
Complainant's Exhibit 224.

Mr. Ransom: As to the book marked Sectio
11, Volume 10, I offer in evidence so much
the maps therein contained as show Lot No.
of Block No. 3236.

The Master: That book will be received ov
the same objection.

Mr. O'Brien: And with the same limitation
as to the purpose and effect as was former
ruled by your Honor?

The Master: Both of these books are received 8101
with the same limitations.

Mr. Chambers: The Master makes the same direction as to photostatic copies?

The Master: Yes.

Mr. Ransom: That will be taken up right away with the department.

The Master: If they won't allow you to make photostatic copies you can make tracings of them.

Book received in evidence and marked Complainant's Exhibit 224.

CROSS-EXAMINATION BY MR. CHAMBERS:

8102

Q. Mr. Foley, you don't know anything about the accuracy of these records, these two books, do you?

A. They are official tax maps of the City of New York, they must be accurate. That is the only thing I would know.

Q. The Henry W. Vogel signed there, he is the surveyor?

A. He is the surveyor of the department, but the surveyor of the Bronx office is Kingsley Lloyd.

Q. He is there now, is he?

A. He is there now.

Q. This appears to have been certified December 28, 1898?

8103

A. Yes, sir.

Q. Those I take it were the commissioners then, Thomas L. Feitner, and Arthur P. Salmon, and so on?

A. Yes, sir.

Q. Are changes made from time to time in this record?

A. Yes, sir.

Q. But it has never been certified since that time to your knowledge, has it?

8104 A. No, sir.

Q. I mean since December 28, 1898?

A. No, sir.

Q. But changes are made in it from time to time?

A. Yes, sir.

Q. Who makes these changes?

A. The surveyor.

Q. Anybody, or just the surveyor?

A. The surveyor of the Bronx office.

Q. I see a lot of pencil marks. Don't other people make marks on them?

A. No, sir.

8105 Q. That is the surveyor you mention, not Mr. Vogel, but the other surveyor?

A. Yes, sir.

The Master: The Bronx surveyor is under the jurisdiction of Mr. Vogel, isn't he?

The Witness: Yes, sir.

Q. That is true, is it, of the other book?

A. Yes, sir.

Q. You don't know whether the information in the book is correct, whether the lines are right, do you?

A. I believe that would be a matter for the surveyor to determine.

8106 Q. Did they jump over the fence to subpœna you?

A. No, sir. I was subpœnaed, I suppose, in a gentlemanly manner.

Q. You were not trying to evade a subpœna, were you?

A. Surely not.

Mr. Ransom: He was not subpœnaed.

The Witness: Mr. Kingsley was subpœnaed and he handed it to me.

Q. Was he trying to evade a subpœna?

Mr. Ransom: He doesn't know. 8107

Mr. Chambers: Judge Ransom seems to imply that every official of the Tax Department is engaged in trying to evade the service of a subpoena.

Mr. Ransom: I charge that in all my experience, either public or private, in the administration of justice, I have never met with such an obstructive course as I have met with in this case.

Mr. O'Brien: Your Honor, just to have this straight, I asked Mr. Tracey, who just went off the stand, if any effort was made to communicate with him or notify him that he was wanted as a witness, either by telephone or by letter or oral communication, and he said no. I asked him if he was here during the month of August, and he said that on every day during his vacation he was at Belle Harbor, where he is staying for the summer. I asked him if he knew that anybody wanted him as a witness, and he said he never knew anything about it until they crawled over the hedge and up on the piazza last night. I am bringing this out so as to have the thing straight, and so that counsel's statement would be verified. 8108 8169

Mr. Hayward: The trouble with Judge Ransom is that this is the first time in his life that he has ever had to get down to the level of ordinary lawyers and get witnesses in the ordinary way. He has been either a court or something like that. That happens to common ordinary lawyers all their lives.

Q. Mr. Foley, your work is that of messenger entirely?

A. No, sir, field clerk.

8110 Q. What is called field clerk?

A. Assisting the deputy.

Q. You are just Mr. Kingsley's assistant?

A. No, I am Mr. Cunningham's assistant in the fourth district of the Bronx.

The Master: Mr. Kingsley is just using Mr. Foley to come here and represent the Department.

The Witness: Yes.

Q. Mr. Kingsley was up on Washington Heights a couple of years ago?

A. Well, he was a Manhattan deputy; I don't
8111 know the district he had in particular, inasmuch as I have been——

Q. Michael H. Kingsley?

A. Yes.

Q. You don't know anything about the details of these maps?

A. Not these.

Q. You don't know whether they are in duplicate or triplicate?

A. Well, I do know that that copy is for the general public, and then the bound copy is for the deputies.

The Master: Those are the only copies?

8112 The Witness: Those are the only copies.

Q. The bound copy?

A. The bound copy, the copy which was produced, I believe, in Court before.

Mr. Ransom: The field map?

The Witness: The field map, yes, known as the bound copy.

Q. The public have access to this from time to time?

A. That is the copy the public has access to, and

is on the counters in the Tax Department for the benefit of the public. 8113

The Master: Do you have any custodians watching these maps?

The Witness: Why, yes, the Department watches them.

The Master: The people cannot come in there and write into them?

The Witness: No, absolutely; they even have signs posted, I believe.

The Master: Do they have custodians watching the books all the time?

The Witness: Yes.

Q. You worked in the Department back in the days when this map was made, 1898? 8114

A. No, sir.

Q. Mr. Edward Sheely's days?

A. No, sir.

Mr. O'Brien: I now renew my objection, your Honor. It now appears Mr. Lloyd has charge of these maps as surveyor and makes such changes as are made in them, and would explain the vari-colored figures here and other notations, and establish through a brief examination, the reliability of the map, and I submit that he should be brought here, in order 8115 that the maps may be verified and explained, and in the absence of Mr. Lloyd and his testimony, these are not admissible and should not be received.

The Master: Motion denied.

Mr. O'Brien: Exception.

By Mr. Ransom:

Q. Mr. Foley, this is the first day that you had these two books in court, is it not?

A. The first time I had these two books, yes, sir.

8116 Q. You first had the field map book?

A. I had a field map, yes.

Q. And to-day you have brought here for the first time these two books which are the official public block map books?

A. Well, I could explain that, if you will look at the inside cover of a field map you will see that it is marked "Block Maps", and in your subpœna you specified Block Map, so I brought a Block Map when I came for the first time, despite the fact that it was the field book.

Q. But you did not bring the public book until
8117 to-day?

A. No.

The Master: In other words you brought what you thought counsel wanted, and he wanted something else, and you have now brought what he wanted, is that right?

The Witness: Yes. I brought what he specified, even though it was the wrong book.

Q. What the subpœna called for was the block map of taxes and assessments, which is the title shown here?

A. It is also the title of the book you got on the first time.

8118 Mr. Chambers: How is that material?

Mr. Ransom: Except as bearing on the question of how many days I have been keeping these men in court.

Mr. O'Brien: How many days have you been in court?

The Master: You need not answer that. It has already been answered.

Q. Mr. Foley, have you also produced here certified copies of the record of the assessed valuations

covering the two parcels of property referred to 8119
certified to by Mr. Kingsley?

A. Yes, sir.

Q. Those are likewise produced by you from the records of the department having been made up for the purpose?

A. Yes, sir.

Mr. Ransom: I offer them in evidence.

The Master: One of them is a further step in Mr. Mulhall's testimony, and the other one is not?

Mr. Ransom: Yes.

The Master: The one that does not relate to 8120
Mulhall's testimony——

Mr. Chambers: I object to this Schedule B, because he called the witness Mulhall and this appears to be a schedule signed by Mr. Mulhall and sworn to by him. We have had his common law proof. Does he need to produce Mulhall's affidavit to further corroborate him? I think it is incompetent.

Mr. Ransom: I will withdraw the whole offer now, and I will offer only with respect to the part testified to by Mulhall, Block 2583, Lot 360. I do not offer the column thereon showing the value of the real estate with improvements 8121
thereon.

Mr. Chambers: My objection is that it is incompetent. He calls Mulhall and swears him and now he offers Mulhall's affidavit to further corroborate Mulhall. They call a witness and then submit his affidavit, and it is incompetent.

The Master: Mr. O'Brien, you object on the ground it is incompetent, irrelevant and immaterial?

Mr. O'Brien: Yes, and that the deputy is not

8122 here that he may be cross-examined as to the affidavit, and the other memoranda that are on that paper. The whole question brings up this matter to me, your Honor, and that is whether counsel had intended and did present these witnesses, the deputy tax commissioners, just to identify an assessment made by their superiors, or whether he brought them in here as real estate experts to show the value of the property, and it may have a very serious effect upon this case as we go along, more serious than it does at this time.

8123 Mr. Ransom: If your Honor has any doubt on it, I would like to be heard.

The Master: I have given this matter a good deal of thought, and I have not yet made up my mind as to just what the law is on this subject. I have reached the conclusion that I am going to permit Judge Ransom to call these various deputies to testify as they have up to this point, but I am also going to let him put in the original or certified copies of the official assessment rolls, so that I may have before me, when the time comes, the proof upon which Judge Ransom relies. It can done no harm

8124 to have it in. As I said at the outset, I am not yet clear in my mind as to just what the law is. I don't know. I am clear on this point, I think that these deputies who have assessed the property in the usual course of duty may be permitted to testify what in their opinion was the value of the property. Whether I have got to take their judgment, or whether I can disregard it in those instances where I may have serious doubts as to the qualification of the man or as to his ability o judge, I am not at all clear.

Mr. O'Brien: I think you must decide, your

Honor. They cannot play shuttlecock with this 8125
proposition. They cannot put it in and then deny the effect of it afterward. As I understand it, judging from the method of the examination of the witnesses, the complainant's counsel has presented these men here as real estate experts. The whole tenor of the examination——

Mr. Chambers: As his experts.

Mr. O'Brien (Continuing):—supports that idea; and they are his experts, and if your Honor in your future deliberation on this subject, having indicated that you have not 8126
reached a final determination, if your Honor will just consider the mental outlook on this proposition, if it were presented by the City bringing in these men and saying they are experts and qualified——

The Master: Yes, I have that in mind.

Mr. O'Brien: (Continuing.)—and you would accept it, whether counsel would not vehemently object to it being received.

The Master: I think that is a question we may discuss and argue later on. I am not going to take, Judge Ransom, part of this paper. If you offer this paper I am going to receive 8127
it. Whether it will have any effect upon the situation referring to the value in improvements later on, I don't know.

Mr. Ransom: I offer all of it.

The Master: If you offer this as an official document, being a certified copy of the assessment roll having on it an estimate of the value of the real estate unimproved and with improvements, I shall take it.

Mr. Ransom: I offer it for all it shows.

Mr. O'Brien: You are reversing yourself now. Previously he eliminated——

8128 The Master: That is why I called attention to it, because I might reach the conclusion that having used the city assessment in one form, which you might deem an advantage, that perhaps the defendants might use the rest of it where they might deem it to their advantage.

Mr. O'Brien: They have made a declaration. Let me be heard on this matter.

The Master: Wait a minute. I am going to have this marked, this copy marked in evidence, over the objection of counsel for the various defendants, and an exception allowed.

The certified copy of the assessment roll
8129 was then received in evidence and marked Complainant's Exhibit No. 226.

Mr. O'Brien: Your Honor, may I be heard here?

The Master: You don't want Foley, do you?

Mr. O'Brien: No.

The Master: Let Mr. Foley go.

Mr. O'Brien: He may want to take this paper with him.

The Master: No, that is a certified copy of the roll.

Mr. O'Brien: Right here, your Honor, is about the rule that that part with reference to
8130 improvements be received.

The Master: Oh, no, I am not ruling on it. I was prepared to rule that I would not take one column of a certified copy of an assessment roll, but Judge Ransom then offered the entire paper, after calling the Judge's attention to the fact that he might find it came back to roost when the defendants might say, "Well, if you use one column, we are going to use the other," and that I may be required to reach the conclusion that under the circumstances I cannot take the evidence as it appears on this

record of the value of the improvement as against the complainant. 8131

Mr. O'Brien: Your Honor, you can see now where we are leading ourselves into error.

The Master: I won't take it as their proof; I won't take it as part of their case, if that is what you mean.

Mr. O'Brien: The proposition is they are putting in something that shows there has an assessment been made by the city of New York on the improvements here, which include the equipment, I assume, to a certain amount.

The Master: Yes.

Mr. O'Brien: Now your Honor says you will not receive it unless those figures go in. I say you are falling into error, your Honor, for the reason that the introduction of all of this was as expert testimony. 8132

The Master: I make the ruling now, Mr. O'Brien, that I won't take part of that paper, but I will take it all, and at the same time I rule now that I will not take that second column of improvements, as evidence of any fact.

Mr. Ransom: We don't claim that it is.

Mr. O'Brien: Well, is it presented as evidence of a fact?

The Master: I don't know whether I made myself clear, but what I have been trying to do, is to place you in a position where, if it was any advantage to you to use the improvement value assessments, that you could do it possibly, though I have not reached a conclusion, but in no event would I let Judge Ransom use that column in his favor. 8133

Mr. O'Brien: Well, I may say that before this time I have cut my eye teeth; that is, in reference to the assessments on improvements.

8134 The objection is noted to the receipt of that. Exception.

The Master: Yes.

Recess was then declared from 11:20 to 11:30 A. M.

Mr. Ransom: I offer in evidence similarly a certified copy of the annual record of the assessed valuation of real estate, Borough of Manhattan, City of New York, 1919, of property between Elizabeth Street and Bowery,
8135 Hester and Grand streets, Section 1, Volume 4, block 239, lots 1 and 5.

The Master: In offering these all you need do is to offer the block and lot numbers?

Mr. Ransom: I will as to future ones.

Mr. O'Brien: I would ask the purposes of the offer.

The Master: I do not think I will have counsel state the purpose any more than has already been stated and discussed on the last previous exhibit, being the piece testified to by Mr. Mulhall.

8136 Mr. Ransom: This is offered on pieces testified to by Mr. Strobel, and a certified copy of the oath of Strobel is thereto annexed.

Mr. O'Brien: I object to it on the general grounds already stated with regard to the last similar paper offered. On the further grounds that this is offered now after Mr. Strobel has left the stand and the cross-examination completed; and that it embodies matters that were not made the subject of either direct or cross-examination of the witness Strobel, to-wit, the value of real estate with improvements thereon.

The Master: I understand it is not offered

for the purpose of bearing upon the value of 8137
improvements. Is that right, Judge Ransom?

Mr. Ransom: That is correct.

The Master: And the Master states that he will not consider it as evidence of that fact for the complainant.

Mr. O'Brien: It is hard to understand counsel. When the last certified copy of an assessment was offered, first he offered it without the items headed "Value of real estate with improvements thereon", and then later after discussion with your Honor, he submitted it with that in.

The Master: Because I refused to take it 8138
with any limitations. Mr. Ransom is offering here a certified copy of a record, and I am going to take that certified copy of the record as it stands, having in mind that it can only avail the complainant in so far as it refers to the unimproved land.

Mr. O'Brien: Your Honor, I object to it on the further grounds that the principals named on this paper, that is, Mr. Strobel, deputy tax commissioner, and Mr. Tyng, the secretary of the Department, are both available as witnesses, and one of them having been on the stand, they should be presented here in place 8139
of something that purports to be a certified copy.

The Master: It is under the seal of the Department, is it not? The other was, I know.

Mr. O'Brien: That part of it is all right. It has a seal and has Mr. Tyng's signature. That is not the debate. It is a question of whether this is entirely secondary. In other words, it presents here really testimony in sworn form before a judge of the Supreme Court.

8140 Mr. Ransom: It presents the record of an official action.

Mr. O'Brien: Without the right to cross-examine or the privilege of cross-examining at the time that the testimony or oath was taken before the Court.

The Master: I think I have your point, Mr. O'Brien. I am going to receive these records. That may be marked. Exception to the defendants.

Mr. O'Brien: It does not contain anything, I would say substantially anything, that Mr. Strobel was asked about while he was on the
8141 stand.

The Master: I agree with you on that.

Mr. O'Brien: I do not know why it should be given a frame. A picture is just as good without it, if it has any virtue at all.

The Master: You may be right about it, but it cannot do any harm.

Marked Complainant's Exhibit No. 227.

The Master: Judge Ransom, I understand you offer each of these certified copies of the records, similar in form to the paper that has just been marked Exhibit 227, these having reference to the assessments made by the witnesses Quinn, Tracey, Nauman, Levy and
8142 Fogarty. Counsel for the defendants interpose the same objections to the receipt of these.

Mr. O'Brien: Yes, and I make the additional objection, your Honor, both with regard to these and those already received, that these are assessments made, presumably. The papers purport to record assessments made.

The Master: Assessed valuation.

Mr. O'Brien: Yes, and that it is an attempt made to offer in documentary form expert testimony on real estate; that the assessments in

question were made by the Tax Commissioners 8143
who are living and available and only a block away and who ought to be brought here to verify and justify these assessments, if anybody should.

The Master: I think you have made that point before. These will be received over the objections stated and exception will be allowed. The first one is Section 3.

Mr. O'Brien: Of course, your Honor, the additional objection is to lumbering up and making a very expensive record.

The Master: The first one is Section 3, Volume 5, Block 870, Lots 47 and 60. 8144

Marked Complainant's Exhibit 228.

The Master: The next one is Section 3, Volume 6, Block 951, lot 35.

Marked Complainant's Exhibit 229.

The Master: The next, Section 3, Volume 6, Block 952, Lots 7, 29, 30 and 35.

Marked Complainant's Exhibit 230.

The Master: The next one is Section 3, Volume 6, Block 953, Lot 1.

Marked Complainant's Exhibit 231.

The Master: The next one is Section 3, Volume 6, Block 978, Lots 5 and 6.

Marked Complainant's Exhibit 232.

The Master: The next one is Section 3, Volume 6, Block 979, Lot 1. 8145

Marked Complainant's Exhibit 233.

The Master: The next one is Section 3, Volume 6, Block 982, Lot 13.

Marked Complainant's Exhibit 234.

The Master: The next one is Section 3, Volume 6, Lots 17, 19 and 20.

Marked Complainant's Exhibit 235.

The Master: The next is Section 3, Volume 6, Block 987, Lot 37.

Marked Complainant's Exhibit 236.

8146 The Master: The next one is Section 3, Volume 6, Block 888, Lot 1.

Marked Complainant's Exhibit 237.

The Master: The next is Section 3, Volume 6, Block 989, Lots 1 and 16.

Marked Complainant's Exhibit 238.

The Master: The next is Section 3, Volume 6, Block 991, Lots 1 and 47.

Marked Complainant's Exhibit 239.

The Master: The next is Section 1, Volume 4, Block 1028, Lot 38.

Marked Complainant's Exhibit 240.

The Master: The next is Section 4, Volume
8147 2, Block 1092, Lot 23.

Marked Complainant's Exhibit 241.

The Master: Next is Section 4, Volume 2, Block 1089, Lot 1.

Marked Complainant's Exhibit 242.

The Master: The next is Section 4, Volume 2, Block 1092, Lot 7.

Marked Complainant's Exhibit 243.

The Master: The next is Section 4, Volume 2, Block 1093, Lot 9.

Marked Complainant's Exhibit 244.

The Master: The next is Section 4, Volume 2, Block 1107, Lot 7.

8148 Marked Complainant's Exhibit 245.

The Master: The next is Section 4, Volume 4, Block 1157, Lot 1.

Marked Complainant's Exhibit 246.

The Master: The next is Section 4, Volume 4, Block 1177, Lot 21.

Marked Complainant's Exhibit 247.

The Master: The next is Section 5, Volume 5, Block 1457, Lot 6.

Marked Complainant's Exhibit 248.

The Master: The next is Section 6, Volume 2, Block 1642, Lot 33.

Marked Complainant's Exhibit 249.

The Master: The next is Section 6, Volume 8149
3, Block 1670, Lot 1.

Marked Complainant's Exhibit 250.

The Master: The next is Section 6, Volume 3, Block 1682, Lots 8 and 11.

Marked Complainant's Exhibit 251.

The Master: Next is Section 6, Volume 3, Block 1683, lot 18.

Marked Complainant's Exhibit 252.

The Master: Next is Section 6, Volume 3, Block 1692, lot 1.

Marked Complainant's Exhibit 253.

The Master: The next is Section 6, Volume 3, Block 1701, lot 5. 8150

Marked Complainant's Exhibit 254.

The Master: The next is Section 6, Volume 3, Block 1712, lot 2.

Marked Complainant's Exhibit 255.

The Master: The next is Section 8, Volume 1, Block 2108, lot 23.

Marked Complainant's Exhibit 256.

The Master: The next is Section 7, Volume 5, Block 1998, lots 50, 53, 54, 55 and 56.

Marked Complainant's Exhibit 257.

The Master: The next is Section 7, Volume 5, Block 1999, lot 1.

Marked Complainant's Exhibit 258. 8151

Mr. Ransom: In order to make the record complete at this point I would like to offer the similar certificate of the record of the assessed valuation for block 3236, lot 1. That is the parcel concerning which is the oath of Mr. James D. Judge, who is the one deputy who has not yet been called to the stand.

The Master: You offer that subject to connection with the oral testimony introduced?

Mr. Ransom: Yes.

8152 The Master: Same objections by the various counsel?

Mr. O'Brien: Well, your Honor, I object to this method of proving the case.

The Master: Objection overruled.

Mr. O'Brien: I do not know whether Mr. Judge will ever be here or not.

The Master: Then I will entertain a motion to strike out if he is not.

Mr. O'Brien: I am here representing District Attorney Swann.

The Master: The certificate as to Section 11, Volume 10, Block 3236, lot No. 1 is received.

8153 Exception to all defendants.

Marked Complainant's Exhibit No. 259.

Mr. O'Brien: Do I understand that Exhibit 259, purporting to be a certified copy of some assessment, is received with the understanding that it is not to be part of this record unless Mr. Judge is produced and cross-examined?

The Master: That is right.

ARTHUR W. TEELE, recalled.

DIRECT-EXAMINATION CONTINUED BY MR. RANSOM:

Q. You were being interrogated regarding

8154 Schedule 6 of Exhibit 205 for Identification, and in response to a question of the Master you had begun to speak about the item of $219,780.74, shown on Schedule 6. From what source did you obtain that figure?

A. I object to that——

Mr. O'Brien: I object to the question as incompetent, irrelevant and immaterial. The witness is being asked now about a figure on a paper that has not yet been received in evidence. It is submitted, your Honor, that the

only proper examination might be, if the offer 8155
is to be made of this paper later, the only proper examination would be some questions that would relate to the general character of the paper, the make-up of the paper. Counsel is proceeding now to ask the witness more intimate questions that assume that the paper has been received in evidence.

Mr. Ransom: Not at all. I am only asking now as to the method of preparation.

The Master: I will allow the question.

Mr. O'Brien: Exception. In fact it has not been shown yet that the witness personally 8156
has made up this schedule.

Mr. Ransom: I am asking the witness from what source he personally obtained this figure and how he verified it.

Mr. O'Brien: I object on the further ground, your Honor, that Mr. Teele, the witness, has only been shown to be a member of the firm of Patterson, Teele & Dennis, a concern that has a large number of employees; he has not been shown to have a personal acquaintance with the schedule, the actual figures that he is now being catechised about. Pretty soon I suppose we will have Mr. Teele's certified copy of some- 8157
thing that he has in mind. That is the method of proof. I only use that expression to emphasize what I have in my mind. This is thoroughly irregular, and I want to say further, if this is the sheet that has to do with rental facilities, receipts from that source, if he is being catechised about that, then this is a sheet that has not yet been furnished to counsel for the other side. The proper procedure would be to hand us some copy of a

8158 paper about which he is being quizzed. He might just as logically put some witness on the stand and say, "Where did you get $280,000.", without any of the necessary preliminaries having been put on the record.

Mr. Ransom: What is the ruling?

The Master: The ruling has been made.

A. The figure of $219,780.74 appears on the operating ledger, folio 1153.

Q. How did you get the itemization of that? Does that appear in the operating ledger at that folio, or did you obtain the itemization of it and

8159 verify the items from some other source?

Mr. O'Brien: I object to that as leading.

Mr. Chambers: The same objection.

The Master: Objection overruled.

Mr. O'Brien: Exception.

A. I traced the items appearing on that ledger folio back to the operating journal, and in the operating journal I found the entries referred to, and also reference to the sundry debtors blotter.

Q. That is, the entries which go to make up the item of $219,780.74?

A. Yes. I referred to the sundry debtors blotter which contain copies of bills rendered by the Con-

8160 solidated Gas Company to the respective debtor companies named here for the use of the facilities as enumerated here, the aggregate of the bills against the respective companies for these purposes being the amounts set down against their names on this schedule. In further verification of these bills I examined a certified copy of the minutes of a meeting——

Mr. O'Brien: There you are again, your Honor, a certified copy.

Mr. Chambers: I object on the ground that

he is using a paper not offered in evidence, to- 8161
wit, the minutes of the board of directors.

Mr. Ransom: We of course will have to prove its authenticity and regularity.

Mr. O'Brien: This paper I call your attention to is entitled, "Rental of jointly used facilities." As I said before, this paper has not been handed to us, though other papers in this schedule were supposed to have been sent to us some time ago, until this very minute.

Now, there isn't any proof in this case, outside of the statement made by the witness of what he saw on the books of account, there is 8162
no proof in here as to jointly used facilities. We are just proceeding from Omega to Alpha. I submit your Honor, that this is not the orderly method of proof, that it is very much to the inconvenience of counsel for the defendant, and it presents a very much disjointed record. How are we going to present in the case on appeal in narrative form the testimony in this case, where they take, as for instance a minute ago, a statement made by Mr. Judge, and he never did appear, and if he does appear it will be some time later in the record? Now, Mr. Teele is asked about a lot of figures, and 8163
he uses the term "verification" and so on. It has not been shown how they run this company, the various ways in which it carries on business with the affiliated companies, the methods adopted for vending and buying gas from each other, and many of these other details.

I submit, your Honor, that over and above all the other objections that we have made to these papers and to the books of account, and all

8164 that, before we proceed any further there should be some proof, some explanation made as to the relations between these companies, the fact that there are rental facilities, the fact that these things are necessary, and reasonably necessary in the conduct of this business, because if they are entirely useless, if they can be avoided, if they are matters of which doubtful proof only can be submitted, this would not be at all admissible. The statement made on the account is necessarily brief, it is enigmatic, as books of account must be, and I submit that the man coming in after these books have been
8165 made, the accountant, all he can say is what an accountant may say, as to the meaning of certain figures, debits and credits. It ought to be established before he be asked to testify in this matter, that these rental facilities are a fact, that the details are correct. This is fundamental, absolutely essential to the case, that it is necessary, reasonably necessary in the conduct of this business to rent facilities, or that they are authorized within the scope of their charter, or their charters under which they claim to be doing business, this
8166 conduct of interchanging gas, and the rental to each other of facilities.

Mr. Chambers: It should also appear what is used. Now, take this first tem, "Use of land, bulkhead and conveying apparatus at the following stations". How are we ever going to be able to tell what land is rented to the Astoria Company. Then, "Central Union Gas Company, use of mains in the Bronx".

Mr. Ransom: If you would only wait a few

minutes that will all appear. We have to prove one thing at a time. 8167

Mr. O'Brien: I call your Honor's attention to this: Assuming that the question is asked preliminary to offering this paper in evidence, we have here, "Use of 18 inch connecting mains in Manhattan and the Bronx; use of 48 inch connecting mains of the Standard Company". Then of the Central Union, use of the following facilities: 48 inch connecting mains in Manhattan and Bronx; 30 inch transfer mains in the Bronx; 36 inch distributing mains in the Bronx; land, holder and accessories at Kingsbridge. Then, in quoted terms—I don't know why they are quoted—"Joint gas rent revenue, ledger folio 1153." Now, as to the other items above that there aren't any quotation marks used, and for all we may know the witness himself uses these titles of the items for the first time; that he has gathered together here figures, and he is producing now another set of books to pile on top of those already received. We are getting into worse confusion than we have had already. At any rate, I submit that the testimony here is assuming that there are mains used, which is assuming a whole lot of facts that are not in this case. 8168 8169

Mr. Ransom: We are now engaged in proving revenues, and in connection with expenses, there are essentially two questions. As to revenues, the question is, was there this money received?

Mr. O'Brien: He doesn't know. He only knows the books show a debit or a credit.

The Master: Mr. O'Brien, I would not let

8170 Judge Ransom interrupt you, and you must not interrupt him. This must stop.

Mr. Ransom (continuing): Was the money received, was the money spent, was the income or expenditure a justifiable item under the circumstances?

The Master: I am going to allow the question. My mind always runs back to this one thing, that sooner or later I am going to find out, before this case is finished, and I don't care how it is done, how much does it cost to make gas; how much oil do you use; how much

8171 coal do you use, and so on.

Mr. O'Brien: May I ask a question? That you haven't got under oath yet a man who says he knows this money was spent.

The Master: I know I haven't. Now don't interrupt Judge Ransom.

Judge Ransom: We are entitled, in fact, we are bound to show the revenues of this Company from property used in its gas business, whether that revenue comes from consumers, or whether that revenue comes from other sources. Now, we will first show what the revenue is; then we will show the circum-

8172 stances of it, the reasons of it, and why. There is that revenue for which we account over and above the revenue which we have received from our consumers, and this question is designed to show the verification of the sources of that item. This item which is called "Joint Gas Rent Revenue" is a heading in the uniform system of accounts, and when Mr. Teele goes to the books, he finds on the books that the company credits itself or debits itself, rather, with having received under that category of

revenue this sum. I am now interrogating 8173
him as to how it is made up, so that in due course, and very soon, I may offer such proof as may be necessary by way of substantiation and connection as to the propriety of that income so accounted for.

Mr. O'Brien: I want to call your Honor's attention to the last item here.

The Master: No.

Mr. O'Brien: You can read it yourself.

The Master: No, I am going to give Mr. Chambers the floor. I have given it to you twice.

8174

Mr. Chambers: What I want to say, while the order of proof is somewhat within the discretion of the Court, still it seems to me he ought not to be permitted to go into this question of income received from the various pieces of property until he has laid the foundation by showing that they have mains that they rent to other companies, and where they are located, and the other facts about it, before he allows a witness who knows nothing about their business to go on and state what the income is.

The Master: I am going to allow the ques- 8175
tion.

Mr. O'Brien: Before you finally rule on that question I call your attention here, illustrating the force of my objection, to the last item here, "Less percentage (representing excess of revenue over expenses and taxes) upon *pro rata* value of jointly used facilities."

The Master: I saw that. There are a number of things.

8176 Mr. O'Brien: There are facts assumed, and there are legal conclusions that are drawn.

The Master: There are a number of things. For instance I saw some place else, it may not be on this sheet, "Property not used for gas business", and things of that kind, but I will take this proof. An exception is allowed.

Q. You examined the minutes of the company?

The Master: He said he examined a certified copy.

Mr. Ransom: Well, I asked him if he also examined the minutes.

8177 The Witness: I examined a certified copy of the minutes of the Executive Committee of the Board of Directors of a meeting held September 14, 1916, if I am correct in my recollection.

The Master: The directors of the Consolidated Gas Company.

The Witness: Directors of the Consolidated Gas Company.

Q. And you have such certified copy of minutes here with you in court?

A. I have.

Mr. O'Brien: That adds to the force of my

8178 objection, your Honor.

The Master: The ruling will stand.

Mr. Chambers: What year? September 14, 1916?

The Witness: Yes, September 14, 1916.

Q. What did you also examine in seeking verification of this item?

A. I examined the report made by the engineer of manufacture, Mr. George E. Woods, in which is laid down the plan for the charges to be made against the company's using these facilities.

Mr. O'Brien: I move to strike out the answer, 8179
your Honor, as the report has not been offered in evidence. Mr. Woods has not been put upon the stand, and there is no proof as to the facts that are now being assumed.

The Master: Motion denied.

Mr. O'Brien: Exception.

Q. You have the copy of this report here in court?

A. I have not. I think I have it, not with me. I am not sure whether I have it or not.

Q. From these sources which you have indicated, did you check up and compare the items making up this total of $219,780.71 shown on Schedule 6? 8180

Mr. O'Brien: I renew my objection to that, your Honor.

The Master: Objection overruled.

Mr. O'Brien: It has not been shown that these papers are correct transcripts of the record of the books of account.

The Master: I am letting the witness tell what he has examined.

Mr. O'Brien: Well, why does counsel incorporate these various figures in there? Why can't he ask him about how he made it up, and then later on we will come to the question as to the facts that are narrated there. 8181

Mr. Ransom: If we do not substantiate or connect this, we will consent to have it stricken out.

The Master: When he comes to offering these papers, all these points you are raising are applicable, but I do not think they are applicable now.

The Witness: I examined further the reports made by the assistant secretary, Mr. Brandage, to Mr. Carter, and the engineering

8182 department, with respect to the charges made against the Astoria Light, Heat & Power Company, and against the Central Union Gas Company for the use of mains in the Bronx; and with that data before me and the valuations set upon the portions of the facilities used by others than the Consolidated Gas Company, I computed the amount of dollars $120,164.09, that being six per cent. upon the amount of valuation allocated to the use of companies other than the Consolidated Gas Company. I have set down the balance of dollars $99,646.65 in one amount.

8183 Mr. Chambers: I move to strike out the witness' answer.

Mr. O'Brien: Your Honor, you might assume the whole case.

The Master: No, I will take all his answers as indicating how he made up these figures. It may bear very heavily whether I will let the paper in evidence or not, but I will take his testimony.

Mr. O'Brien: Exception.

Q. In connection with these various companies in the Sundry Debtors' Blotter, did you find bills
8184 rendered by the Consolidated to these companies for these respective amounts or aggregating these respective amounts?

Mr. O'Brien: I object to the question as incompetent, irrelevant and immaterial.

The Master: Objection overruled.

Mr. O'Brien: Exception. The rendering of bills does not prove the fact.

The Master: No.

Mr. O'Brien: They could interchange bills and interchange figures and keep the books and

let them dovetail and that doesn't prove the 8185
essential facts.

Mr. Chambers: I can't see how the rendering of bills has anything to do with the proof.

The Master: I will let him answer that question.

Mr. Chambers: The question is did they rent some property; did they receive the money.

Mr. O'Brien: Are we to assume that counsel is going to present some officer of this company who will go under oath and testify to these facts?

Mr. Ransom: The next witness.

The Witness: I found copies of bills against 8186
these various companies for the various charges, aggregating the amount of $219,780.74.

Q. And the bills as against each company aggregating the sum shown in the first column of this schedule 6?

A. Yes, sir.

Mr. Ransom: I think, if the Court please, it will perhaps be saving time all around, if I act at this time upon the basis of what your Honor said when Mr. Teele was last upon the stand, when you said that "I think the questions I have asked are sufficient to lay a basis 8187
for offering the paper as a tabulation. The tabulation, that figures you have given, you testify is a correct tabulation from those books?

The Witness: It is."

Now, I make an offer at this time in evidence of Exhibit 205 for identification, and I assume counsel for the defendants will wish to cross examine upon the manner in which it has been made up, and as to the competency, and prob-

8188 ably in the long run we will save time if I make that offer without further interrogation upon these other schedules, unless your Honor has a contrary opinion.

Mr. O'Brien: Your Honor, here we have had the witness on the stand for about fifteen or twenty minutes, or half an hour on a previous day, asked a few general questions about this. It is the most unusual thing for counsel to even assume your Honor is going to receive that paper in evidence.

Mr. Chambers: Is this the paper you gave us a few minutes ago?

8189 Mr. Ransom: It is, of which most of the schedules were given you some months ago.

Mr. O'Brien: I want to call your attention to the method by which counsel is carrying on this case, so far as the defendants are concerned. Some weeks ago, the days he has already referred to in some of his discussion, there were certain papers sent to us. We are now offered a group of papers given schedule numbers and incorporated with them are matters and papers that we have never seen before. I ask your Honor, and I am saying this rhetori-

8190 cally now in the form of a question, if that is candor, if that is open frankness that we would expect in a rate case where the defendants must proceed to his statisticians and accountants and investigators, and in taking these papers as they come along, with the assumption that they are all the papers that they are going to offer in evidence, it would simply mean, your Honor, that there would be another waste of time, that the representatives of the defendants will be sent on

wild goose chases, and in this connection I call 8191
your Honor's attention to what I said yesterday about the allegation as to expenses of other years, where there isn't any definite statement that they are going to make that part of the case. Now, the question will arise, why were some of these papers withheld and flashed on us for the first time to-day. Was it done to put us at a disadvantage? Was it done to have us waste time and money on matters that are not going to come up in the case?

Mr. Ransom: Most or practically all of the schedules embraced in this exhibit were fur- 8192
nished to the defendants in the form in which they now are weeks and months ago. I think there are a few, perhaps two or three, I am not sure of the exact number, which were subsequently made up and which have not been furnished. The utter unfairness of the attitude which has been taken by counsel for the defendants throughout this case is sufficient reason for not furnishing further of these things to them. The attitude of counsel for the defendants has been such as only to cause regret that anything has been furnished to them.

8193

Mr. O'Brien: Well, counsel for the defendants are not looking for any courtesy nor any privileges from the defendants. They are standing on their rights and they are going to get them. Now your Honor, referring to the main objections here, after the hurried and cursory and incomplete examination of the witness as to the method by which this paper was gotten together, I don't think extended argument is necessary on the question of

8194 admitting it at this time. Mr. Teele has not been taken over this. I ask you——

The Master: Mr. O'Brien, I have the matter clearly in my mind, I think. At pages 2152, 2153 and 2154 of the record I asked some questions of Mr. Teele, as a result of which I made the statement, apparently addressing myself to you: "I am asking these general questions, Mr. O'Brien, to the end that when Mr. Ransom is through and offers this tabulation in evidence, I am going to permit counsel for the defendants to cross-examine this witness. I think the questions that I have asked are sufficient to lay a basis for offering the paper and the tabulation. The tabulation, that figures you have given, you testify is a correct tabulation from those books?

8195

"The Witness: It is. Q. And all of the items on this Exhibit 205 for Identification appear in the books of the Company"—and so on.

Mr. O'Brien: Your Honor, I appreciate that reference has been made this morning to numerous reports and documents of various kinds that have not yet been offered in evi-

8196 dence.

The Master: Yes, I understand that.

Mr. O'Brien: When your Honor was passing upon that you had before you books of account already received in evidence, and I think your Honor assumed that all the witness was giving you was some additions made from those books. Now we are launched in on a very wide field here that includes various papers and reports and matters that are not yet offered in evidence, and I think the wit-

ness ought to be withdrawn until that offer is 8197
made.

The Master: If you will let me make a statement, you will get through very much quicker. That is why I wanted you gentlemen to bring out on cross-examination the fact, as you now claim, if it is a fact, that this is not merely a tabulation of figures appearing in these books, but that it is computations made depending upon other matters; and that will present clearly to me the proposition to me as to whether I am to let this go in as a tabulation. When I had this under consideration before, 8198
my mind ran in this direction: I let these books in as general books of account, I had ruled that I would not allow the witness to testify to tabulations from them unless he was prepared to say that they were correct, and that I would not let him say they were correct unless he went back to the original time books and time sheets and receipt sheets and things of that sort. He did that and came back and swore these books were correct, and from which he had made a tabulation. If this paper now offered to me is a tabulation based only on these books I have received in evidence, I am going 8199
to take it, and having taken it, I am going to give counsel for the defendants a reasonable time to prepare for the cross-examination on that paper.

Mr. O'Brien: Wouldn't it be well to have that examination prior to the receipt of the paper, your Honor?

The Master: No.

Mr. O'Brien: I submit that counsel has not

8200 taken him over all these sheets; he has only asked him about a few of them.

The Master: No, I have asked him; I took him over all of the papers.

Mr. O'Brien: We have here a number of sheets that have not been touched upon.

The Master: But I touched upon them. If you will get this clearly in mind, there are two points here, one is it merely a tabulation of books in evidence? If it is, I am going to let it in, and give you an opportunity to analyze these sheets, have your experts analyze them,

8201 and come back with a prepared cross-examination of this witness. If, however, this tabulation is not solely based on these books, I am not going to take them as a tabulation based on these books. So you have got a cross-examination for the purpose of showing me it is not a tabulation based solely on these books; and then you may have a cross-examination as to the tabulation itself.

Mr. O'Brien: Your Honor, are we to understand that the witness is finished with regard to the work for which we took an adjournment of three or four days?

8202 The Master: Yes; that was finished some time ago. I could not understand why Mr. Ransom was asking all these questions except for the purpose of explaining how he arrived at them.

Mr. O'Brien: Well, we withdrew, we adjourned for three or four days and gave the witness time to examine the papers, and now something——

The Master: I will ask a question here myself.

Mr. O'Brien: Will your Honor let me finish? 8203

The Master: No, I want to find out about this myself. Take this last item you have been referring to, "Less percentage representing excess of revenues over expenses, including taxes upon *pro rata* value of jointly used facilities", do I understand you to say that data is made up from information outside of these books that were in evidence?

The Witness: It is a separation of the items that appear upon the books into two parts.

The Master: And it is separated based upon information which comes from elsewhere?

8204

The Witness: Based upon a report made by the engineer of manufacture and a claim of the company that this property is not used for gas-making purposes.

By the Master:

Q. Is that report carried into any of these books by figures or otherwise? Is there any entry in these books based on that report?

A. Why, all the charges that are made against the respective debtor companies for the use of these facilities are based upon that report.

Q. Precisely, what has this item of $120,000 been brought in or does that appear anywhere in these 8205
books, or must you go to the report to find it?

A. The item of $120,000 does not appear upon the books. It is a separation of the items that do appear upon the books.

Q. But that separation is based upon evidence outside of these books, is it not?

A. Yes, to the extent that it is based upon the report made by the engineer.

Q. Yes, but there are certain reports like reports of merchandise received, time used, money paid,

8206 labor expended and things of that sort, that are in the shape of reports, but they are carried into these books?

A. Well, the results of them are carried into the books. The basis laid down in the report of the engineer of manufacture.

The Master: I am willing to take from you a tabulation of anything from those books I have received in evidence, but what I hesitate to receive in evidence is a tabulation or calculation based upon any evidence not before me. Any report, receipt or voucher or time book or time sheet I assume is part of these books,

8207 but a report talking about the values of properties which are not kept in the general books of account, which you use for the purpose of adjusting items or separating them, I do not think I can take.

Mr. Ransom: We are not making now an offer of proof of values in that respect, or anything of the sort. We are accounting here now for certain revenues. It appears that there are certain revenues which are shown on the books and a total which appears. That total appears to be derived from——

8208 The Witness: From charges made.

Mr. Ransom: To certain companies. All that appears on the books.

The Master: Yes, that $219,000 appears on the books.

Mr. Ransom: And the various items appear on the books. Which go to make it up.

The Master: Making up the $219,000. Yes, I will take it for that.

Mr. Ransom: In verifying that charge or those charges to the different companies, he

examined the minutes and report. It is true, 8209
of course, that that report and those minutes, although part of the record, are not in themselves a part of the books which have been received in evidence.

Mr. O'Brien: But he said he used them to verify these figures.

Mr. Ransom: We shall not be able, of course, to complete our proof on that phase of the case until we have proved not only the basis of the charges contained in that report of Mr. Woods and of Mr. Brundage, but also the soundness and correctness of that basis. But we have 8210
got to prove one thing at a time.

The Master: I think the receipt in evidence of a tabulation of this kind is so extremely important in this case that I must hesitate to take any tabulation for it until the basis for it is in court and in evidence.

Mr. Chambers: May I ask a question or two along the same line?

The Master: No, I will not allow you to ask any question at all. I have indicated the basis of my ruling. It is up for discussion. I do not think I have any right in a case of this kind, in a matter so important, where I have 8211
stretched the rule pretty far about taking in the books of account so a tabulation could be made to permit this witness to go further and testify to the tabulation now based upon a record or book that may never be permitted in evidence. I will not do it.

Mr. Chambers: We have not objected to this yet.

The Master: You do not have to. I have objected to it.

8212 Mr. Ransom: Will your Honor take it subject to connection?

The Master: No, I will not. I am going to exercise my discretion as to the order of proof by requiring you to put in evidence every basis upon which this calculation or tabulation is made.

Mr. Ransom: Then when we offer it the other way they will make, as they always have, just the contrary objection. They will offer some man like an engineer or officer who knows what we may call the practical end, and they will
8213 say, "Why, there is no foundation laid for that because you have not proved your earnings.

The Master: So far as their questions and objections do not jibe with my view as to what is right, I utterly disregard them, and you need not have any fear as to the positions taken by the other side except where those positions are apparently well put or well founded in my humble opinion, and with which I agree. If you offer a piece of proof and they attempt to say you should have done something else, and I do not agree with them, you need have no fear about it. I am going to rule now that I
8214 will not take a tabulation based on these books. I understood this was a tabulation based on these books.

Mr. Ransom: It is a tabulation based on the books.

The Master: No, it has certain other things.

Mr. Ransom: There are certain apportionments grouping book items that had to be made. Based upon things that are not in turn set out in the books.

The Master: Then you are referring to mat- 8215
ters not in evidence, and I will not take the tabulation until they are in evidence. So that when that paper is received by me I can myself go to any one of those books, or the report, or any document, whatever it may be, and myself check up any item in it. Otherwise I will not take it.

Mr. Ransom: Mr. Teele, is this a report——

The Master: How are you going to prove by him that that is a report kept in the regular course of the business? He does not know that.

8216

Mr. Ransom: But if we find the basis he used as an accounting proposition.

The Master: It will not satisfy me until you have gotten the documents in evidence. I may be very stupid about these things, but I try to talk simply and clearly. These books in evidence, I have ruled, carry with them every supporting document you have, like receipts, vouchers, receipted bills, contracts and the like. They do not include that report except in so far as that report shows a certain amount of work was done for another company, on which a charge was made. That report is 8217
either in or out, depending upon whether it is referred to anywhere or is part of these entries in these books. If you have got a report there that is not in evidence as part of these books you cannot prove it by Mr. Teele, but must in some other form.

Mr. Ransom: I want to say this: I am frank to say that I do not quite understand your Honor's ruling, but in so far as I do under-

8218 stand it I think it is true that I have known considerable of these rate cases and I think I have examined the record of practically every important rate case that has been tried in this country. I never have known and I do not think there ever has been an instance of such a technical insistence upon common law proof as has been made in this case, and I do not know of any other instance in which the complainant has been required to try to prove everything at once. The practice, which is uniformly followed in these complicated matters, is to prove things subject to connection.

8219 I cannot have four witnesses on the stand at once, or two. We come here into a court of equity under the present equity rule, and the insistence upon technical common law proof is the most rigid that has ever taken place in any American case.

The Master: I have tried to restrain myself from interrupting you, but I think some of the statements you make are the most absurd I have ever heard. Instead of holding you to common law proof I have gone way the other way; I have gone to the extreme, I think, of

8220 relieving you from common law proof. We would be trying this case for six years if I confined you to common law proof. That is the most absurd thing I have heard.

Mr. Chambers: I respectfully say that your Honor has gone so far outside of common law proof that you will endanger any judgment that the complainant may get.

Mr. Ransom: I think if you will examine the cases I have met for years in these rate

cases, you will withdraw the statement you 8221
have made and endorse my statement.

The Master: Judge Greenbaum required an entirely different kind of proof; he required common law proof until he found it was impracticable.

Mr. Ransom: The result was that a little bit of a case took a court year to try.

Mr. O'Brien: A little bit of a case?

The Master: I am not going to have a court year for this case, but I am not going to have it assumed that I will take a tabulation upon documents that may never come in. Of course, 8222
you cannot have four witnesses on at once; of course you have got to take one step at a time; of course you have got to take the cart before the horse sometimes, and I have frequently made the statement in this case that I did not care whether the cart was here before the horse or the horse before the cart if they were both in court at the same time. But when you are asking me to take a tabulation, a résumé, of this witness, without requiring him to bring in every book, paper and itemize every detail, and have me assume when that comes in that I have before me a tabulation of other 8223
records in evidence, that I have permitted, I am going to insist on having in court before I take that tabulation the other matters upon which it is based, because I think in this instance there may be some doubt as to whether I can take some reports or other statements it is based on, because I may be going away beyond what I think is the thing to do. That

8224 is the reason I am requiring an order of proof in this instance that apparently does not suit counsel for the complainant, but that I cannot help.

Mr. Ransom: But the difficulty here is on a matter of revenues of the company, where every dollar of revenue that we prove is to our disadvantage.

The Master: Let us analyze that a minute. You say here on Schedule 6 that you received $219,000, against which you charge yourself with $120,000. Is that right?

8225 Mr. Ransom: Yes.

The Master: You are charging yourself with that. So that you show a balance of $99,000 in revenue; is that right?

Mr. Ransom: Yes.

The Master: Suppose as a matter of fact that ought be greater or less, or your net revenue should be $200,000, instead of $99,000, that would not be so much in your favor, would it?

Mr. Ransom: No.

Mr. Hayward: If the Master please, I wanted to say a word about this thing.

The Master: Do you think it is necessary?

8226 Mr. Hayward: Yes, I do; I think it is very necessary. It is simply this. I would be very glad to follow along any lines the Master would indicate in reference to the degree of proof. I stood up here and objected as hard as I knew how, as I had a right to object, and if I thought the Master was wrong on a proposition, I had a right, I thought, to be heard on my view of the admissibility of the books.

The Master: Certainly. 8227

Mr. Hayward: And I disagreed with the Master, and still disagree with him, although he has ruled. Now I want to say, instead of going counter to the Master on this thing, assuming those books are admissible, which for our purposes we must assume they are, I do not agree with them, but they are in—assuming they are in and are admissible, I think your ruling is absolutely right on this proposition. It is the only other alternative you could take and protect these defendants, except to exclude those books.

8228

The Master: Ordinarily I do not get very peevish because counsel disagree with me, for the reason that one side or the other is bound to disagree with my rulings. I cannot possible make rulings that both sides feel are acceptable. I am dissatisfying one side or the other; but what I do not like is the attitude of counsel on either side at any time indicating that I am unfair in doing something.

Mr. Ransom: There has been no intimation from me of that nature.

The Master: I did not mention you at all. I mentioned counsel for both sides. I am going 8229
to use my best judgment in protecting the rights of both sides. The Gas Company is going to have every opportunity to show that it is entitled to the relief it asks for. If it takes a week or two longer, it is going to take it, but it is going to be done right. I am going to protect the company, as I have done heretofore, against a protracted litigation running over years. I am going to protect the public also against proof from which it ought to be safe-

8230 guarded and which I do not think should come in.

Mr. Ransom: Perhaps you will take an adjournment now until one o'clock, and I will probably have to put a witness——

The Master: I think hereafter, too, in view of the fact that I am frequently quoted as having made suggestions or directing how things shall be done, I shall no longer make any suggestions, but simply rule on what is offered. I do not think I am accomplishing what I hoped to accomplish by facilitating this matter.

8231 Mr. O'Brien: There was another branch of this subject that I had in mind when I made my objection, and that was that I had assumed after the tests were made by the witness, the tests and comparisons, that we would have preliminarily to the tabulations being offered, an opportunity to cross-examine.

The Master: Why, I said that; I have said it several times, that as far as this paper is concerned, if it were based entirely on the books in evidence, I should now insist on your going forward with the cross-examination, testing the method of its preparation.

8232 Mr. O'Brien: I thought that would be after it was offered in evidence or received.

The Master: Yes, but I would limit that purely to the method of its preparation. If I thought it was a proper tabulation, I would leave it in and then give you an opportunity to cross-examine as to the accuracy of items. There are two branches of the cross-examination, and that is why I was trying to get you gentlemen to bring out the fact that I could

see at once from what this witness had said, 8233
that this tabulation was something more than a mere tabulation of the figures in these books, but you would not do it. Do you want to adjourn? You have not any other witness?

Mr. Ransom: I can go ahead with this witness.

Mr. Ransom: I make an offer of the document minus the last item on Schedule 6.

The Master: You had better find out from the witness whether there is any other item in there. I don't see what possible use that item is for your purposes. Just go through that 8234
exhibit, Mr. Teele, and see whether any other figures in there are based upon anything else than the books themselves, in other words, whether it is anything more than a tabulation.

By Mr. Ransom:

Q. Let us take Schedule 7. Will you state the manner in which Schedule 7 was made up? Will you describe what is shown by Schedule 7, how it was made up?

A. Schedule 7 represents miscellaneous rent revenue and deductions. The first item headed "Rent" represents rent from various properties as shown in the schedule. The total amount of $361,- 8235
601.12 appears upon operating ledger A, folio 1153. The items set down in this column of rent are the items of rent received by the company for the use of these properties, with the exception of the first item.

By Mr. O'Brien:

Q. Is that reference made to just the total, or does it refer to the items?

8236 A. That is the total of the ledger account, $361,601.12.

Q. But not there as such?

A. Well, in the ledger account as such? Their nature does not change from their initial point to the end, but they are not set down on the ledger page as such, because there isn't anything set down upon the ledger page other than the total amounts.

By Mr. Ransom:

Q. That is shown at folio 1153, $361,601.12?

A. That is the total of the figures appearing on that folio.

8237 Q. Proceed with your description of the schedule and how it is made up?

A. The items set down in the other three columns as rent deductions are items appearing on ledger folio 1087 of Section B of the operating ledger. The first item appearing in the rent column of $182,417.23 is a portion of the rent received from the tenants of the building at No. 130 East 15th Street. That is not the whole rent, it is a part of it. It is the total amount of rent less six per cent. upon the valuation allocated to the portion of the building occupied by the tenant.

8238 Q. Go ahead and state from what source you obtained information as to the rent paid by the various tenants, or as to space rented to them?

A. The rent paid by the various tenants was traced back to the sundry debtor's blotter, and the various bills rendered to and paid by the tenants. The apportionment of the total rent paid is upon the basis——

The Master: The difficulty is the apportionment and the six per cent. upon the valuation allocated to the tenants.

Q. Describe the method followed by you in that 8239
respect?

A. The apportionment of the valuation is on the basis of the ratio existing in the square feet occupied by the Consolidated Gas Company and the tenants in the building, and upon the amount so allocated to the use of the tenants there has been a computation made of six per cent. which amounts to $125,871.46. That amount is deducted from the total rent charged to the tenants, and is included in the item shown at the bottom part of the schedule as not applicable to the gas business.

Q. So as to take that value to that extent out 8240
of the rate base?

A. So as to take the value of the building allocated to the tenants out of the rate base, that portion of the building not being claimed by the Gas Company as being used for gas purposes.

Q. With respect to the other items of rent, how did you verify those items or ascertain them?

A. I traced back to the copies of the bills rendered against the tenants occupying the properties, those bills having been subsequently paid, as shown by the records.

Q. This schedule appears to be made up on the basis of some apportionment or allocation perhaps 8241
between those applicable to the gas business and those not applicable to the gas business. What was the basis or source of your apportionment in that respect?

Mr. O'Brien: I object to the question as leading, and as embodying a declaration that is not in the testimony.

Mr. Ransom: We will have to bring it out.

The Master: I will allow it.

Mr. O'Brien: Exception.

8242 A. I have included as items of rent in this schedule as set out the items of rent received from properties claimed to be used by the company in the gas business, these properties were taken from the list of properties furnished to me by the company.

Q. Have you a copy of such list?

A. I have a copy. I don't know whether it is here in court or not. I can inquire.

Q. Will you ascertain?

A. The schedule is not here.

The Master: We will adjourn until Monday

8243 at 1:15.

Adjourned to Monday, September 8, 1919, at 1:15 P. M.

Last Complainant's Exhibit 259.
Last Defendants' Exhibit U.

8244

CONSOLIDATED GAS COMPANY OF NEW YORK vs. NEWTON, ETC., *et al.* 8245

Before ABRAHAM S. GILBERT, Special Master.

NEW YORK, September 8, 1919.

Met pursuant to adjournment.

Present: MR. RANSOM, MR. VILAS, MR. GOETZ, of Counsel for Complainant.
MR. CHAMBERS, of Counsel for defendant Newton.
MR. HAYWARD, MR. CLARK and MR. NEUMANN, of Counsel for Public Service Commission. 8246
MR. O'BRIEN, of Counsel for defendant Swann.

Mr. Ransom: If the Court please, I suppose the first situation is as to this so-called statement of property or so-called inventory.

Mr. Chambers: Truly called inventory.

The Master: Do not interrupt, Mr. Chambers, please. 8247

Mr. Chambers: I thought I was asked about it. Can I not explain that I have not received it?

The Master: Please, Mr. Chambers, do not interrupt.

Mr. Ransom: The situation is this: the physical task of taking off and compiling this statement of property was completed late last night. I had it given to me this morning and put together this morning. The checking of it is now going forward.

8248 I am unwilling at this moment, and until the going over and checking of this statement has been completed, to turn it over to counsel for the defendants, or to Judge Mayer. Judge Mayer has so been advised during the past hour, and I now make that statement for the benefit of counsel.

It is a document of several hundred pages, and as I indicated before, is very much longer and in very much greater detail than what had been originally contemplated.

In view of the statements of defendants' counsel here the other day, following the session before Judge Mayer on August 25th, it was felt by the
8249 complainant that we should try to give the greater detail and some of the other information that has been asked for. The document has been typed and has been put together. Until it is checked and until I have had an opportunity to look it over, I am not going to turn it over to anybody.

The Master: Mr. Chambers, have you anything to say?

Mr. Chambers: May I say respectfully, if your Honor does not want any interruptions on my part, will you please see to it that we are given opportunity to speak and to object, lest some of our rights might be taken away from us?

8250 The Master: Have you anything to say with reference to the statement made by Judge Ransom?

Mr. Chambers: Nothing, only I have not heard a word from the complainant, and therefore, I ask that you adjourn the case until we get the inventory.

The Master: Then you have something to say?

Mr. Chambers: Yes.

The Master: Your application is to adjourn until you get the inventory?

Mr. Chambers: Exactly.

The Master: Mr. O'Brien, have you any applica- 8251
tion to make?

Mr. O'Brien: I join in the objection.

The Master: In the application?

Mr. O'Brien: In the application.

The Master: The application for an adjournment. Then we will adjourn on that application.

Mr. Hayward: I have a letter from Judge Ransom. It says here in the letter that the complainant had filed with the Judge and had sent a copy to Mr. Chambers, and was furnishing our firm with a copy as soon as it was typed. I imagine since this letter was written, the Judge has decided he wants to check through the inventory, before carrying out 8252
what he said here in the letter. I would ask the same thing, unless we could at the same moment, agree that it would take us some time after the inventory was filed to go through it and make our preparation, and that we might take one adjournment that would cover both occasions.

Mr. O'Brien: Your Honor, I might add that the weather seems to have turned exceedingly warm, and the week presents a holiday spirit in the city.

The Master: I will not do anything about it until I know that the paper directed to be furnished by Judge Mayer has been furnished, at which time I shall ask Judge Mayer to make a proper direc- 8253
tion as to anything he may deem wise, with reference to a proposed adjournment. Do you think you will have that checked to-day, Judge Ransom?

Judge Ransom: The situation is that I have copies of it here, all addressed for delivery. Until the checking is completed, I shall not deliver it.

The Master: Do you think it will be checked during the day?

Mr. Ransom: My impression is that it will be checked during the night.

8254 The Master: So that you think it will be ready for delivery before nine o'clock in the morning, or before the opening of Court at 9:15?

Mr. Ransom: That is my best judgment, although I could not be sure on it. My best judgment is it will be finished during the night.

Mr. Hayward: Could I make a suggestion, then, if the Master please?

The Master: Yes.

Mr. Hayward: That Judge Ransom take to-day and to-morrow. This is not made primarily for the purposes of delay, but simply is a suggestion, to take to-day and to-morrow on this checking process.

8255 Wednesday, I think, is going to be declared a business holiday by the Stock Exchange and other people; we might come back here Wednesday morning, to see what status we are in then.

The Master: No, I would rather do this: I had arranged with Judge Mayer to take up any application with reference to this inventory at two o'clock, or as close to two as possible. There is not any sense in hearing any application for an adjournment, when the application may be a further bill of particulars, as I might call it. In other words, if counsel for the defendants say it is not what the Judge ordered, the first thing for the Judge to de-

8256 cide is whether it is what he ordered; then if it is what he ordered, as to whether there shall be any adjournment. I think the better thing to do is to adjourn until, say, ten o'clock to-morrow morning, by which time Judge Ransom will probably be able to deliver these statements, and then the question can be brought up as to whether they are in the form directed, and further, as to whether there shall be any further adjournment.

Recess until 2:00 P. M.

RECONVENED AT 2:15 P. M. 8257

The Master: I have just conferred with Judge Mayer, and have gone over the situation with him, and he agrees with me that he ought to postpone the hearing of the application for adjournment until the inventory has been presented to the defendant, and until they have had an opportunity to look it over and to see whether or not it is satisfactory in the sense that it complies with his order. He understands that the inventory, so-called, will be in the hands of counsel for defendants to-morrow, Tuesday, as early as possible. In pursuance of my arrangement with him, he will hear any application 8258
with reference to that inventory, and any application for further inventory, if counsel for defendants believe that this inventory furnished is not as complete as he directed; and also he will hear any application for an adjournment by reason of the inventory, having in mind the opportunity to examine it in order to prepare for further cross-examination. He directs me to ask counsel to be here sharply at ten o'clock on Thursday morning for such purpose. He has other hearings set down for 10:30, so he must take this up at ten o'clock.

I am directed to proceed with my hearing at 10:30 Thursday morning, and to take proof offered 8259
by complainant, it being the Judge's view that any adjournment that is granted by reason of the inventory will not take effect until the close of this week, so that if he should grant an adjournment, it will be an adjournment beginning after the close of sessions this week. Therefore, I will be prepared to take further proof beginning at 10:30 A. M. on Thursday morning. I shall try to have two sessions on Thursday to make up some of the lost time, and

8260 I probably will try to add a little time on Friday if I possibly can. I have, of course, made my arrangements for half day sessions, and have made my appointments accordingly, but I will try to give extra time on Thursday and on Friday.

The situation now is, therefore, that counsel for complainant will be prepared to proceed at 10:30 on Thursday morning with his proofs. All counsel will attend before Judge Mayer in this room at ten o'clock on Thursday. My hearing will be in Court Room No. 2. The hearing is now adjourned until Thursday morning at 10:30.

8261 Adjourned to Thursday, September 11, 1919, at 10:30 A. M.

Last Complainant's Exhibit No. 259.
Last Defendants' Exhibit U.

8262

CONSOLIDATED GAS COMPANY OF NEW YORK vs. NEWTON, ETC., *et al.* 8263

Before HON. JULIUS M. MAYER, *J.*

NEW YORK, September 11, 1919

Met pursuant to adjournment.

Present: MR. RANSOM, MR. VILAS, MR. GOETZ, of Counsel for Complainant
MR. CHAMBERS, of Counsel for defendant Newton
MR. HAYWARD, MR. CLARK and MR. NEUMANN, of Counsel for Public Service Commission 8264
MR. O'BRIEN, of Counsel for defendant Swann.

The Court: Judge Ransom handed me this inventory which I presume has been handed to the other side.

Mr. Ransom: It was sent to the defendants on Tuesday afternoon at the same time that it was sent to your Honor.

The Court: What do the defendants say about it?

Mr. Hayward: We would like to be heard on 8265 this matter.

The Court: Very well, what do you say?

Mr. Chambers: Do you want us to go ahead?

The Court: Yes.

Mr. Chambers: We were able to get this inventory to Mr. Maltby on the 9th at 4:30. He has been over it, and as a result of his examination we say it is insufficient, among other reasons, for the following:

Of the total reproduction costs of about $113,500,000, no details whatever are given of property totalling over $40,000,000.

8266 Of the 153 sheets only 110 really cover data not heretofore supplied.

All of the information regarding over $42,000,000 is covered by descriptions consisting of 33 typewritten lines.

For example, in the case of meters, ordinary meters are not separated from prepayment meters, and there is no indication whatever in the schedule of the number of prepayment meters, yet the price is different in each case.

For example, in the case of services, nothing is stated as to length, size or character of pipe, depth below surface, kind or number of valves and fittings
8267 used, or the amount of paving displaced when services were laid, etc.

Again, for example, the schedule does not give the weight of pipe laid for trunk lines and mains, the number or kind of valves and fittings, depth below the surface, amount of rock excavated in laying mains, etc. No detail whatever is given for the number, size or character of railway crossings or river crossings. No statement whatever is made as to the amount, kind and cost of paving displaced and relaid when the mains were originally installed.

The holders of the company, which are given a reproduction cost of nearly $7,500,000, are briefly
8268 described upon 10 pages containing only 66 lines of description.

For example, the Kings Bridge holder, which is given a reproduction cost of $1,100,000, is covered by five typewritten lines.

The Court: Suppose five lines is enough. That does not mean anything to me.

Mr. Chambers: No details whatever are given of the foundations; there are no lengths of connections; the number of valves and amount of general piping are not stated, and the weight of the steel in the holder is not even referred to. The same

criticism can be made of the data given for every 8269
other holder.

As to the remainder of the schedule covering property estimated to have a reproduction cost of about $13,000,000 out of a total of over $113,000,000, the information given is either insufficient or so confused that little of it could be utilized or checked.

For example, three pages are devoted to gas laboratory equipment——

The Court: Where is that Mr. Chambers?

Mr. Ransom: At pages 143 to 145.

Mr. Chambers: There is no separation by buildings, floors or rooms, and in many instances the 8270
description is wholly insufficient to enable one to identify the apparatus and to determine the accuracy of the list if one were to go over all of it with care.

With perhaps a few exceptions the information about buildings and structures generally is insufficient to determine the cubical contents of each structure or the amount of each kind of material used therein. The data regarding foundations is very limited, and there are no statements to indicate to what extent the foundation of apparatus and machinery are included, either in part or in whole, in the structures in which they are placed. 8271

There are frequently such general statements as the following:

> "FENCES—paving—drawings, etc. and foundations: all located in Blocks 982, 985, 988, 989, 991 in the Borough of Manhattan."

How can any one tell from this statement what is included?

Again, for example, what can one obtain from the following:

> "Brick stack 5′ 4″ x 5′ 4″ x 50′ 0″ high on pile foundation, complete with foundations,

8272 valves, piping, connections, and accessories, located in Blocks 988 and 989, in the Borough of Manhattan."

This apparently in the beginning is a description of a smoke stack, but connected therewith are many things located all over two blocks.

Upon practically every page of the schedule there are general terms of a similar character which are indefinite, and from which no one could determine what was included or excluded.

No maps are even referred to which would show even the approximate location of the mains of the company.

8273 In no instance is the date of erection, construction or acquisition shown.

The figures do not differentiate *actual* cost figures from *estimates*, and no reference is made to any records where the figures of actual cost can be found.

The schedule contains no drawings, plans or figures of a single structure or unit of apparatus.

Now, we submit that the schedule is neither adequate nor complete. No engineer could price the various items from the information given thereon, and the company has not done so.

Indeed, it would be impossible, except in a few
8274 cases, to identify and check the items in this schedule. One would be virtually compelled to make an entirely new inventory of the property in order to determine the accuracy of this one, leaving out of account entirely the reasonableness of the figures either as to cost, actual or estimated, or reproduction cost as of December 31, 1918. To Mr. Maltby I give the credit of having made these criticisms about the inventory, because after all a case like this is really a contest between the engineers, more than it is a contest between the lawyers.

I call your Honor's attention to this kind of a

statement, which I noticed right in the very begin- 8275
ning of the schedules. They say here——

The Court: What page?

Mr. Chambers: That seems to be on page 6. "The complainant is of the opinion that the present value of the parcels of land wholly unimproved, shown upon this and the ensuing pages, is substantially greater than either the figures indicated", and so on.

Mr. Ransom: Read the rest of it.

Mr. Chambers: There is no need of reading it all. The Court has it. There is a sort of self-serving declaration, which, it seems to me, is wholly unnecessary in a schedule of an inventory. 8276

The Court: I do not think there is anything in that. There is no point in that. They can be of any opinion they want, but what they say is that for the purpose of this proceeding, however, without affecting the complainant's rights in any other proceeding for a higher value, complainant has submitted proof of the 1919 assessed valuation by the public authorities, and submits that the value of these appraisals is at least the sum for which they were so assessed. That is all they say. They simply want to reserve their right if, at some time, somewhere, some other proceeding occurs which may involve the question of value, they will not be 8277
bound by the admission in this case except for the purposes of this case. That is all. Is that your point?

Mr. Ransom: That is exactly our point.

The Court: I do not want to take it up piecemeal, but while we are at it, take this very page 6. There you get a description of the piece of land, and you get a statement that in 1906 the court value or original cost of the land acquired since 1905 was $160,258; that in 1919 the assessed value was

8278 $127,000, and those are the figures that they submit.

Mr. Chambers: Yes. If your Honor please, which is that $160,000; is that the court's value, or is that the original cost of the land? We are very anxious to find out the original cost. Of course, we can find out what the Court valued it at. We have that record.

The Court: There is no question as to that being stated. What is it; do you know?

Mr. Ransom: All those things have been furnished a long time ago. We have furnished lists of the original cost of all land acquired since 1905.

8279 They have those records, very complete.

The Court: Yes; but I mean to say is $160,000 to the court value or the original cost?

Mr. Ransom: I think at Hester Street that property was all acquired prior to 1905.

Mr. Chambers: I think your Honor will find that the $160,000 is neither one nor the other.

Mr. Ransom: I will just show you the type in which it was submitted to them. 200 Hester street, there is the figure. Those things have been very fully furnished. This sum refers to the more detailed schedules, of which they have 319 pages, regarding these properties. $160,000 was the court

8280 value in 1906, and they have been furnished these itemized schedules, showing for example, as to this property $25,808 additions to land since January 1, 1906, representing the assessment for the widening of Canal Street, which is shown by the references as to where the detailed data on that may be found.

The Court: What Mr. Chambers wants to get at is whether the $160,000 was the so-called court value or was the actual cost. That is his point.

Mr. Ransom: Well, the $160,000 as is shown by these documents which have been furnished to them

—$160,000 is court value, and in this instance 8281
$25,808 is actual cost of additions since 1906.

Mr. Chambers: That is just it. We do not know what the original cost of that piece of property is. Then when we are all through we have the value at which the Court fixed it in the other litigation and then the additions. Now, what is the original cost of that?

Mr. Ransom: Well, if you can find it, you are at liberty to do so, but we cannot.

Mr. Chambers: I think you should be obliged to give it to us.

Mr. Ransom: We have had seven months' time on it, and you may have the same time. 8282

Mr. Chambers: We need that.

Mr. Ransom: So did we. You can go to it. We would be glad to have you get it.

Mr. O'Brien: I would like to say something here at this point.

The Court: No, you will not. I do not want any interruptions. This hearing is going to be conducted in an orderly fashion. Mr. Chambers is addressing the Court. You will not address the Court, or any one else, until the Court says so. Go on, Mr. Chambers.

Mr. Chambers: If your Honor please, I was all through with that page, and all through with our 8283
criticism, so far as we have gone, except to say that Mr. Maltby, who was in the Minneapolis Gas Light case, tells me that that was a plant that was worth approximately $6,000,000, and in that case the Company furnished an inventory made up of a number of volumes, which is a fair sample of the kind of inventory we would like here, and which we suspect the complainant has, but for some reason or other, does not seem to want to give us.

In this Minneapolis rate case, Mr. Maltby has brought into Court an inventory made by the Com-

8284 pany, which is a fair sample of the kind of inventory we would like to have, and the kind of inventory we feel we should be furnished, and that they are able to furnish, and we suspect that they have such information, but for some reason or other they do not care to give it to us.

This company, the Consolidated Gas Company, was organized in 1884, as I remember, and were investigated by the Legislature in 1904 by what was known as the Stevens Committee, and then they tried the other action in 1905, and we suspect that since that time they have been to a certain extent keeping their eye open as to some future litigation
8285 over the 80 cent gas rate, and they must have some kind of an inventory like that furnished in the Minneapolis case. Why they do not want to give it to us we cannot understand, because our engineers will have to go over all this property and examine it and appraise it.

The Court: Have you a different set of appraisals for the real estate, as differentiated from the articles necessary for making gas?

Mr. Chambers: As to that I can say frankly that we have not yet decided on the course we would pursue as to the real property. For instance, Mr. Ransom is now attempting to prove as a part of his
8286 case the assessed value of the real property. If he is going to continue that and submit that as his valuation, why we do not know exactly how we will handle the real property; but as to that part of the property of the Gas Company which would come under the appraisal of a gas engineer, we are using gas engineers to appraise it, separate from the others.

For instance, as I understand it, the gas making property is required to be appraised by a man who is a gas engineer and who knows about gas making, so really we have two sets of experts, or will

have if we appraise the real property—real property 8287
appraisers and gas engineers.

The Court: What I am getting at, the purpose of the inquiry is whether the real property appraisals are separte so that the real property may be covered by real estate experts and the gas making property by the gas engineers.

Mr. Chambers: Yes, they are distinct, real property appraisers and gas engineers, and only those two, as I recall, we will need.

The Court: Have you got your petition, or your objections as I saw you reading them off?

Mr. Chambers: Yes. Mr. Maltbie prepared this written up, and I would just as lief submit it. It 8288
has not been corrected by Mr. Maltbie, but I think it is substantially correct.

The Court: Do you want an opportunity to look this over before you answer it, or do you want to answer now, Mr. Ransom? I think it would be a very good thing to look this over in detail.

Mr. Ransom: I should be glad to look it over, but I do not think I need to look it over in detail before commenting upon it.

Mr. Hayward: I would like to be heard very briefly on one or two matters, if the Court please.

The Court: Yes. Mr. Gilbert says he has an order in which he asks you to be heard, and we will 8289
follow that order.

Mr. Hayward: Yes, sir, your Honor, that is agreeable to me.

Mr. O'Brien: Your Honor, I concur in the objection made to the inventory, as incomplete, and as not meeting what I believe to be in your Honor's mind on May 16th, when you directed counsel for the complainant to furnish us with a complete inventory of the property on which they intend to predicate an unfair return. The items that Mr. Chambers has brought out, I think clearly show that

8290 this is not time-saving, but will be time-consuming, and as a preface to the other items of incompleteness to which I intend to refer, I want at this time to specially call your Honor's attention to something in conjunction with what we are considering here—the inventory, and particularly in its relation to the letter addressed to your Honor with reference to the inventory and which spoke about the time that was consumed so far in the hearings of this case. The first witness called was the witness Alrich. After he was interrogated some time in the direct, we began to think——

The Court: I don't care anything about all that.

8291 I have looked at the record, and I am here to see if I cannot have information presented to counsel for the defendants and their engineers which will enable them to make a proper and necessary preparation, and then to see if I cannot hasten on this litigation. I don't care what——

Mr. O'Brien: Well, I will sum it up in one sentence, your Honor, and save your time and save mine.

The Court: It will not help me any. You say one thing and the other side says the other thing.

Mr. O'Brien: Well, the record speaks for itself. What I was going to say in one sentence was that

8292 with this inventory in August, the time consumed in the examination of that witness would not have been necessary; in fact it is a futility anyway, because he did not give us any of these items, he only gave as a bird's eye view of the property, and that time was unnecessarily consumed.

The Court: You will disobey my request, but what I want to know is, you concur with Mr. Chambers?

Mr. O'Brien: I concur with Mr. Chambers, and I call your Honor's attention in addition particularly to some matters on which he has not touched.

The Court: Well, that is what I want to get at.

Mr. O'Brien (continuing): Glaring deficiencies 8293
in an inventory.

The Court: What are your exceptions?

Mr. O'Brien: The chief is that they have not given us the very important thing in connection with the vessels, property, equipment and plant, and that is the third dimensions—thickness. Now, there is no use of our experts proceedings to examine that property unless they set fourth in their inventory all the way through with regard to these items, where thickness is important, the thickness of the steel or the iron or whatever it may be—the third dimension. That applies to practically all of the items that are set forth in the inventory, and 8294
as illustrative particularly of where it is necessary, but only for purposes of illustration, I refer to pages 56, 63 and 70, as splendidly illustrative of what I have in mind—the thickness of the material. Now, another thing we want is the maximum pressure thrown by the gas holders—the water pressure, that is, the balancing column of water on each holder gives us a ready means of the weight of each holder in sight tube within a tenth of one per cent, and this obviates a great deal of computation; and I call your attention to the fact that all the way through the itemization is lacking, and that applies to almost every sheet of this inventory. I 8295
call your Honor's attention further to the fact that they have not given us a very important item, extremely important item, the year of construction. How much will hinge in this case upon how old this property is, and when it was put up? As to buildings, the cost of material at the time it was put up, if that cost is not shown by the books and has to be estimated, and the cost of equipment, because, as your Honor well knows, the item of depreciation in the property is extremely important, and hence they should have given us here and should

8296 give us now the year in which these various properties were erected or were installed. Now, in regard—*before I pass from it—in regard to the lack* of itemization, I would call your Honor's attention to the fact that practically every page, they have simply an item at the bottom of the page, which item is not giving the cost, reproduction cost or original cost set opposite it, so that the sum total does not guide your Honor.

The Court: Do you mean you want them to say three center sills, $1.22 apiece?

Mr. O'Brien: Oh, that is the absurd end of it, your Honor. I mean to say, taking page 63, four
8297 holders each, 100,000 cubic feet, it is easy to give us the original cost of each. That is so with the other items on that page and other pages to which I am referring. Of course, where it comes down to a lot of miscellaneous stuff, discretion sounds sensible always, but these items of cost are not of any use to us, the sum total cost isn't anything. They ought to give us the cost of each item.

The Court: Let me interrupt to ask this question. When you put in the evidence, we will say, of page 63, do you then give the cost of each of the holders, or how do you do that?

Mr. Ransom: I think we, of course, will have to
8298 show some details after the different items.

The Court: I mean, I suppose you will give the cost of each holder, will you?

Mr. Ransom: I assume we will have to give that in most cases. I have given here, of course, far more than we thought we should have given, or should have been required to give in this case.

The Court: I will get to that in a minute. Here is a point about your illustration, Mr. O'Brien. You are told here that there are four holders at the 21st Street station. Those are perfectly capable of being easily looked over. Laying aside for a moment

your point about the third dimension, you are given 8299
a lot of detail as to this thing. Now, when it comes to the reproduction cost, it is your expert's opinion, and their opinion, whatever it may be. Now, when it comes to the original cost, when they come to that, they have got to give in evidence enough to satisfy the Master and the Court to make a holding. In other words, I mean to say, they have got to give something about which he can make a holding as to what the original cost is, if that comes into the matter as a matter of law and as a matter of consequence.

Mr. O'Brien: If it is deferred until then, your Honor, it means an awful lot of time will be lost. 8300

The Court: I don't think so.

Mr. O'Brien: It will mean a great saving in time if these things are set forth, and I submit that in my short experience in these matters the inventory gives that detail.

The Court: Of course it will be helpful.

Mr. O'Brien: It will not only save the time of the expert who is examining for the defendant, but it means a saving of time on cross-examination.

Mr. Ransom: Here is the one passed upon by the Appellate Division, that is a form that was passed on by Mr. Justice Page in the Appellate Division (handing paper).

8301

Mr. O'Brien: Then again, your Honor, one cannot say how far they will go in that. They may not put in any evidence on original cost, they may simply stand on the reproduction price, and there you are.

The Court: Well, except for possible information, the Supreme Court—when the case comes before the Supreme Court it might well be argued, and I know the argument to the contrary, that the original cost was of no consequence at all. I say it might be argued. Now, whether that is right or

8302 wrong, no one will say until the Supreme Court passes on it again. Suppose they say, "We don't care anything about the original cost."

Mr. O'Brien: Well, I think they are getting around to that position, your Honor.

The Court: Suppose they do.

Mr. O'Brien: I have a very strong opinion on it, with respectful deference to your Honor's view.

The Court: I have no view about it at all. There are two arguments. They are both strong. One is the argument that original cost is immaterial, and the other is that it is very material, and I am not going to pass on it here. But suppose they take the
8303 position they don't care what the original cost is.

Mr. O'Brien: Then, in that event, this information is misleading and only confusing, and may lead to a wild goose chase on the part of the defendants if they follow it up.

The Court: I don't know, I am sure.

Mr. O'Brien: Let me say further along that same line, I was going to say further that the original cost in each instance has following it in parenthesis "actual or estimated". That don't give us a detail as to where it is actual and where it is estimated, and in the cases where it is estimated, the basis of the estimate, and I think it is fair to do that, be-
8304 cause this means not only a great time-saving, your Honor, but when it comes to cross-examination all these matters will be gone into, and a great deal of time taken up.

The Court: I have got your memorandum. Is there any other point?

Mr. O'Brien: As I go along there are really so many things I wanted to say, your Honor, that this only came to us late on Tuesday evening; in fact, I had rung up Judge Ransom to ask where it was; and he told me it was on its way, and presently it was presented to me, and the intervening holiday,

of course, has afforded us no time to go into the 8305
matter with the detail it ought to receive, and that before any extensive criticism or analysis is made of it; and when I came to Court I was going to ask for further time to prepare a critical analysis of the inventory.

Your Honor, I will give you another illustration of what I had in mind at page 73. If your Honor will point to page 73, where a large number of buildings were maintained at the 42nd Street station, and the items of original cost for each as far as obtainable and the estimate where they are not obtainable would be very helpful and a great deal of time would be saved, and the sum 8306
total does not give us anything that will save us any time. And I refer your Honor further along the same line to page 146.

The Court: What you mean is so much for the valve house and so much for the engine house, and so on?

Mr. O'Brien: Yes. Then on page 146, if your Honor will refer to it, it reads "Trunk lines and Mains". I respectfully submit that the details necessary are entirely lacking. I think we ought to have the location of the mains, and the expense of each should be fixed by their statement so far as they are able to state it, when the mains were 8307
installed. Then the proper description should be given so that we may be able to determine that they are not duplicating their main system, or so that we may know that they are maintaining their mains in the same streets with affiliated companies, where they have their main system, where one or the other might be maintained.

I call your Honor's attention further to page 150 entitled "Gas Engines and Appliances". There is no detail given there,—"Gas Engines and Appliances Rented", as to the original cost or the esti-

8308 mated cost. I take it that the ordinary life of a range is ten or twelve years, and I am now talking from some experience with this company's ranges; and all of these were installed in recent years, so that they are able to give us the actual cost, and they should include not only the invoice cost but the labor, the labor that has been expended in handling the merchandise and putting it in place. Some detail as to that, some detail as to the type, so many Peerless ranges, so many Reliables, so many fixtures of another type, all that ought to be set up in a reasonable particularization. That is entirely lacking. On the same page you will find "Tools
8309 and Implements, Original cost (actual or estimated) $149,000". Then reproduction cost. There is no statement made as to where they are located or where they may be found, and that ought to be furnished us as well as the date of purchase. Some of these implements may be entirely out of date and may be in a junk pile and of no value to the company. The question of purchase, the time, the location, the general character and class of property included under that heading ought to be given.

The same criticism might be made of the other items on that page, entitled, "Automobiles and Accessories, Furniture and Fixtures, Scows", and so
8310 on.

We have on the next page, page 151, an item reading, "Engineering superintendence, original cost $2,220,911.09," then the reproduction cost. It is submitted that that ought to be cleared up by some definite statement as to particulars. If one-fifth of the engineering superintendence was on the 15th Street office building, we ought to know it. If part was on the Astoria plant, we ought to know it. If it was work done by men connected with the company and hence shown on their books as salaries, we ought to know it. If it was work done by

outside engineers for the construction company, by Warren & Wetmore, architects, or steel construction people under contract, those particulars should be set forth. 8311

The Court: I think I have your various points.

Mr. O'Brien: The last item that I wish to refer to is on the last two pages, if your Honor will bear with me: "Deduct, sum representing proportion of value of General Office Building and land ($3,240,435.08) rented to and used by various tenants, $2,097,857.67" which is carried out to the right. The details I think should be given. That is not sufficient for anybody to work on.

The next item of $2,002,734.79, being a value of portion of jointly used facilities rented and used in part by other companies, viz.: land, bulkhead and conveying apparatus at 21st Street, 42nd Street and 111th Street stations; certain mains used by the Central Union Gas Company in the Bronx; certain 48" connecting mains in Manhattan and the Bronx; certain 30" transfer mains in the Bronx; certain 36" distributing mains in the Bronx; land, holders and accessories at Kingsbridge, all cover the item of $2,002,734.79. It is submitted that that is the value list so far as this case is concerned without something else that ought to be given us. 8312

On the last page I call your Honor's attention to the going value here, the item of $12,000,000, which is set up as "Going value", and this leads me to another point that perhaps is not covered by the inventory but has to do with this general subject. When we appeared before your Honor on May 16th I spoke about some detail in the shape of an inventory, and I also called your Honor's attention to some statement from the company, and the necessity of our having a statement as to the revenues and the expenses of each of the years that 8313

8314 they want to put in question, they having urged in their complaint that the statute has been unfair and confiscatory from the time that it was enacted, as to their company. And when I referred to that, counsel for the complainant made some not exactly clear statement, but as I caught it, it referred to "going value", that they were going to refer to these years and show losses which they would cover by "going value". That is a new idea of "going value" to me, and if that was their idea of going value, this $12,000,000. item is put in to cover losses, and not as defined by Judge Miller in the Kings County case, but on some theory of their own; but we have
8315 a right to know what were the losses they sustained since the system started, and we ought to know how that $12,000,000. is made up.

The Court: I have an important hearing on at eleven o'clock.

Mr. Hayward: If your Honor please, this thing came to us last Tuesday, and I took yesterday off and have only seen the inventory this morning. I must say that I am terribly disappointed in it from a helpful attitude. There are lots of things in here to help me and lots of things absolutely more confusing than no data at all would have been.

I was going to speak of this grouping of buildings,
8316 plants, stations, houses, etc., aggregating $1,840,000. or whatever it may be, that Mr. O'Brien has referred to. I hoped the buildings would be itemized so that we could go over them with our own architect and look those buildings over with the dimensions, and say how much would it cost, how much is it worth; for instance, if one was worth $30,000., and there are ten such buildings, they are worth $300,000. total. There is no such item for any separate building, which as your Honor knows would ordinarily go with the inventory of a building, as to cost or present worth.

The other important thing that I have observed, 8317
—and I only refer to it in order to tell your Honor what the custom has been in similar cases,—is found on page 146 of the inventory, where appears an item of $16,161,000. worth of mains and trunk lines, estimated by them at a reproduction cost of $30,000,000., which I submit is clearly a pretty big chunk of this property—$30,000,000. worth of it; and I wish to call your Honor's attention to the impossibility of ever verifying anything on that page. There are seventeen lines there, and there might just as well be six lines, which would do us just as much good. At the top they started with a certain number of feet of 2 inch cast iron pipe, and so on 8318
down, they run up a certain number of feet of pipe until they get up to 48 inch, some 48 inch pipe, there about the middle, the eighth line. Then they drop back again to 2 inch pipe which they started with in the beginning of their schedule.

If your Honor please, as to this case, so far as I know, it has always been the custom—of course the public authorities in checking these things cannot go and dig up all the streets to see what is under the streets. That would be absurd; but they can and they do either in a gas case or electric light case, dig across spots along the line of these mains, and go to a certain point where there is alleged to 8319
be 48 inch cast iron pipe, and they dig down and find out what is there, of what type the pipe is. But your Honor can see from this that it would be impossible for us to make any investigation whatever as to this pipe that they have put a value of $16,000,000. on. We think we ought to have a chart which they have showing where these mains are, because this case is almost inextricably mixed up with other companies, more or less or entirely subsidiary, and it is only by means of such a chart that we can tell which of these mains under the street

8320 is used by the Consolidated Gas Company, because it is not right to predicate a value on that some other company is using. But under this inventory it would be impossible to find out where any of this pipe is. We do not want to put any unnecessary burden upon them, but in some of these matters, like the 14th Street station, they have a total of these buildings, and they must have had the separate items of each one in order to make up that total. They must have had a column of figures, showing pumping house so much, and other items so much, which when totalled up at the bottom gives the figures we have here. It seems to me it
8321 would be impossible for any of our engineers to take this inventory in its present form and go to the property and get the information we want; and what I have been asking Judge Ransom since last May, is that I said if he would give me the inventory of this property so that I could see the building, and the engineer or any one else would say it was worth $10,000, or $20,000., if Mr. Hine, our gas engineer, or anybody else says it is worth that much, then I would o. k. it and agree to it and that would take it out of this case. But you cannot do it with this inventory, if your Honor please. It is impossible for anybody to find out these
8322 several items on which they predicate their value.

The Court: I have got your point.

Mr. Ransom: If the Court please, I do not know whether you desire to hear comments on these various things which have been brought up by counsel for the defendants. I might just refer to two or three of them before——

The Court: I think we could get at it this way, because this is what it gets down to. Of course, you do not have to give the inventory in the detail that the defense asks for, but the failure so to do will unquestionably prolong this lawsuit.

Mr. Ransom: Just let me show you some of the 8323
instances of the utterly unfounded complaint——

The Court: Let me do this my way.

Mr. Ransom: All right.

The Court: If they, from their point of view, think they must develop the proof on some points, they have a right within proper limits to cross-examine; and the result of it is that 1,100 feet of pipe will occupy more stenographic space and cost more money than probably all the pipe put together.

Mr. Ransom: I was just going to refer to that a minute if I might.

The Court: Wait a minute. This is simply a ques- 8324
tion of seeing whether we can devise a way in which to expedite this litigation. These rates cases take entirely too long, and it is simply because lawyers are constantly at arm's length, when they ought to get together if they can.

That leads me to ask you the following question: You have laid out here a list of things on which you rely; that is a very fair thing to do. That shows the defense what it is you are going to base your rate on. I want to see what merit or lack of merit there is in their contentions. Take this very thing at page 146.

Mr. Ransom: May I just refer to that? 8325

The Court: Will you just take that up?

Mr. Ransom: In the first place, Colonel Hayward complained because we started in with one and one-half inch cast iron pipe and run up to 48 inch cast iron pipe, and then dropped back to two inch wrought iron pipe. Of course, what is done is first to list the dimensions and quantities of each size and kind of cast iron pipe, and then when we have done that, proceed to do similarly with the wrought iron pipe, which, of course, shows the utter lack of merit in the suggestion.

8326 Mr. Hayward: May I ask Judge Ransom, if the Court please, what the "and so forth" stands for on page 146?

The Court: I do not understand that to be his point. I understood his point to be——

Mr. Ransom: Well, the second point. He says he does not know where these mains are and what part they are of the system?

The situation as to that is this: Certain of these mains were, of course, installed prior to 1906, and the installation of the uniform system of accounts; certain were installed after. As to those since 1906 or since December 31, 1905, we have submitted to
8327 the defendants in pursuance of your Honor's direction many months ago 319 pages on additions and withdrawals on street mains and the other items of property shown in this inventory. Those show just when each piece of property was purchased, what year, what were the prices paid for it, and the like.

The situation as to the company's mains, is this: The company has not merely one diagram or chart, but it has many hundreds of pages, making up what are called its main charts. Those show those things in the most minute detail. The engineers and the accountants of two of the defendants have been at work upon those things for months, taking
8328 off tabulations and checking the entries in this document which I here show to your Honor with respect to mains, giving in detail just where each piece of main work has been done, just what year, just what it cost, and the like.

We submit that under those circumstances it is not within the bounds of reason to require us in an inventory which already runs 150 pages, where we have already submitted 319 pages of accompanying data, to set forth in a so-called inventory the detail which they in effect already have.

The Court: Are all those charts, &c., to which they refer before them? 8329

Mr. Ransom: They have been available to all of the defendants and the experts of the Attorney General and the men have been at work on them for a period which I do not exaggerate when I say it is a matter of months. Some of the men who have been at work upon them are here in court.

The Court: What do you say as to that?

Mr. Hayward: I say, if your Honor please, that what he is referring to that he gave us as replacements, &c., put in since 1906, has neither the size of the pipes nor the lengths. In each one of these items there is an essential factor left out that we 8330
have not been able to get for love nor money, by hook nor crook, or in any other way, and I defy anybody to take from the papers Judge Ransom has given us a determination of what these pipes are, their size, where they are located, how they run, or whether or not they are used by the Consolidated Gas Company or some of these other companies.

The Court: Do not the maps show that?

Mr. Hayward: They do not show the size nor the length of the pipe. They show neither the size nor the length of the pipe. In the item he has given us to-day they show, as you see, an incompre- 8331
hensible number of feet of certain inch-pipes, in the other he shows the cost of the pipe, but not the amount nor the size. Isn't that true, Mr. Ransom?

Mr. Ransom: Under the system by which these mains are laid——

The Court: Let me ask you this: You made up this page, and I am looking at it now from the point of expedition,—you made up this page 146?

Mr. Ransom: Yes.

The Court: When I say you, I mean, of course,

8332 the people in the company whoever it was. Of course, that was made up naturally from some data.

Mr. Ransom: Surely.

The Court: Those data, I assume, show so many feet of cast iron pipe of such a number of inches.

Mr. Ransom: That page of this schedule of property, page 146, is simply the data which we took off from our maps and main records, the same maps and main records from which the defendants had previously taken off this data. In other words, in connection with each piece of work that is done, there is a little diagram, and there is the statement as to where the work was done, who did it, what the

8333 amount was. That is linked up to the general main map, so that with these schedules and with these references, which your Honor will see upon this document, the experts of the defendants have been checking those things.

The Court: Can you not have your people meet the experts of the defendants, without reducing this to a long rigamarole of rivalry—just take their constituent original data with the experts of the defendants, and with your little maps and things, and show how the thing is done?

Mr. Ransom: May I say this: There is no difficulty about that. That is the thing which we have desired from the very beginning of this case to do.

8334 But this is the situation. While there might be a willingness on the part of one or two of the defendants and their experts to do that, there is not such an attitude on the part of the third defendant. We have not been able to have any co-operation of that kind from one of the defendants, and consequently, there has not been any co-operation of any kind with any of the defendants. Now, our view is exactly that.

The Court: Are you willing to do that?

Mr. Hayward: I am willing, if your Honor please, to do this. I submit that we should have

as a minimum from this Company in connection 8335
with these mains, the size of the pipe, what kind of pipe it is, the number of feet they claim there is of it under the ground, in what street that number of feet is under the ground, and with that as a starting point, then we can do just exactly what your Honor suggests. Our gas engineer says that without such information, which has never been furnished, it will take months and months and months for him to run that down.

The Court: Why cannot your engineer go up to the Gas Company and do it?

Mr. Ransom: He has done it.

Mr. Hayward: He has been months at it, and he 8336
has no data, no information from which he could arrive at a starting point. All we ask for is, as I said, the size of the pipe, how much of it there is, when it was put down, where it was put down. Those are perfectly fair things, are they not? Do you know of anything less we should have to make a beginning?

The Court: It sounds reasonable in so interesting a subject as gas.

Mr. Ransom: All these matters are in these main books. They have gone over them, checked them; they have had the vouchers. For us to undertake to make up these main maps and give this detail 8337
would take longer than it would take to try this case.

Mr. Hayward: That is only since 1905, your Honor. He cannot make the sweeping statement, but only since 1905 we have had that. They must have the data correct, and if their totals are correct they must have that data, too.

The Court: You all puzzle me dreadfully. What I cannot understand is why Mr. Expert for the defense cannot go up to the Gas Company, and the Gas Company on their side say the way we got 1,246 of 1½ inch cast iron pipe was as follows, and here it is, and here is a

8338 map, here is another map, and here are some books, and there you are.

Mr. Hayward: It is very simple and we will do it.

The Court: Instead of having a long period of work and all kinds of work on pieces of paper like this. What I am getting at is, can you give these defendants the data that Colonel Hayward refers to, if they will in good faith send their expert up to consult with you?

Mr. Ransom: If the three defendants will do that, we will.

The Court: I do not care. Any defendant
8339 who does not do what I ask him to do can do what he pleases, but there will be no delay by my instructions to the Master if any defendant fails to do what I ask him to do.

Mr. Ransom: This complainant company believes, and believes to the uttermost, that it is absurd to have to try to go over matters of this sort, page after page, of a printed record, in a rate case. But we have been confronted with this situation as to the most elementary things. Things on which there was no controversy, like papers on file with the Public Service Commission, or record papers in the Register's Office. The attitude of the defend-
8340 ants on those things, which are not susceptible of controversy, forced us, even though we furnished the statements to them—they have forced us to go into a rigorous common law proof.

The Court: Yes, but nobody gives me a direct answer.

Mr. Ransom: My answer is absolutely correct. We will give to the experts of any of the defendants the most complete data in amplification of the things that are set forth in these schedules of property as filed today, and as set

forth in these various schedules of property 8341
which were furnished to these defendants during May and June. Our books are open, our records, everything is open.

Mr. Chambers: And I will give you a direct answer. Mr. Hine will go up there and do what you suggest, providing they will give him honest data to go by and providing there is some record made of what they tell him about it. I do not accuse them of anything, but I know something about his experience heretofore. We want some record made, stenographic, or in some other way, when they get together and they say the pipe is located here, 8342
is of such a size and such a depth, and we want some record made so that they cannot come into court and say we did not tell you any such thing, or you are all wrong on what we told you, or what we showed you. We want to pin them down to some writing about the information they give us so that when they come into court we can rely on it. That is all we want. Mr. Hine will go up there if that is done. It is in order to expedite the case. This case would be tried in a quarter of the time if you gave us what we want.

Mr. Ransom: May I say this, your Honor: 8343
We are not going to ask them to take our oral statements with respect to these things. These things are matters of record, matters of maps, they are matters of vouchers, they are things which are not open to verbal controversy such as might arise between counsel.

The Court: As I understand the situation, you will not need that at all. Everything is worth one trial. You go up there with Mr. Hine and you will take 1,242 feet of cast iron pipe—a most interesting subject. Mr. Hine

goes up there and they show him the data from which the total was made. They show him where that pipe is and the other things to which Col. Hayward referred.

Mr. Chambers: Yes, the depth and length.

The Court: The depth and length?

Mr. Chambers: And weight.

The Court: And they show him that data and he makes a memorandum. That gives him the constituent elements that make up the total. Then he goes on all through these various points of a similar character which you think have left the inventory in the air, instead of putting them to what seems to be the more or less useless task, a time-taking task, of gathering together a lot of small data, and putting it on a piece of paper, when it would have to be gone all over again by the defendants.

Mr. Chambers: Are you referring to mains now?

The Court: I am referring to everything that would make life happy for me.

Mr. Ransom: I merely ask this, your Honor: When they have done that, will they then let us know which items are controversied and which are not?

The Court: Mr. Chambers said so and Colonel Hayward said so, and I assume Mr. O'Brien will.

Mr. O'Brien: I have got a slightly different view of this matter.

Mr. Ransom: That is the trouble, but those two are willing.

Mr. O'Brien: Your Honor, I started to make a statement, and I hope I won't be interrupted.

Mr. Chambers: I adopt your Honor's suggestion as a very good one, but I want Mr. Ran-

som to put his O. K. on Mr. Hines' statement 8347
when you tell him the size, and so forth.

Mr. Ransom: We are not going to O. K. anything. We are going to show him the records.

Mr. Chambers: Then I want you to put your O. K. on the records.

Mr. Ransom: Why should we do that?

Mr. Chambers: Because if it is correct you should O. K. it. I do not want you to back down it.

Mr. Ransom: These records we keep under the supervision of the Commission——

Mr. O'Brien: May I make a statement?

The Court: Judge Ransom has the floor. 8348
This is degenerating into a debating society.

Mr. Ransom: We will show the records back of this data, but if Mr. Hines shows the records do sustain the data, we want to know from you whether you still contest the data or do not.

Mr. Chambers: Your records do not give us any information that we want at all, unless you have something you have not shown.

Mr. O'Brien: Will your Honor hear me a minute?

The Court: Yes.

Mr. O'Brien: Your Honor put a question to me, and I want to give you a direct answer. 8349
The defendant, Edward Swann, District Attorney of the County of New York, will not consent to the substituting of some examination for testimony in this case—some examination to be made at the office of the Company, based upon such records as they see fit to offer us.

The Court: If the defendant, Edward Swann, wants to be an obstructionist, I know exactly how I am going to rule. That is no position for any public officer to take.

8350 Mr. O'Brien: Will your Honor permit me to finish my statement?

The Court: That is no position for any public officer to take, and I know he would not take it if he knew you were advocating it.

Mr. O'Brien: Will your Honor bear with me a minute?

The Court: Very well, I will bear with you, if you make a statement that is the kind of statement that should be made before a Court.

Mr. O'Brien: From the statement one could not tell whether it is the kind of mains installed since 1906——

8351 The Court: I do not want to go into details; I want to know whether in lawyer-like fashion the lawyers representing these defendants will send their experts up to the office of the Gas Company for the purpose of satisfying themselves as to the truth and details in a matter of infinite detail, to eliminate the waste of long and unnecessary cross-examination, to eliminate the waste of stenographers' minutes, and to come to a conclusion as soon as may be, so that this case can go to the Supreme Court of the United States.

Colonel Hayward, representing the Public Service Commission, has acceded to the Court's
8352 suggestion. Mr. Chambers, representing the Attorney General, has acceded to the Court's suggestion. But I am not going to ask this complainant to expose itself to the delay and annoyance and extra labor that I am suggesting for them in the hope of ultimate expedition, if there is one of these three defendants who is not going to act in this regard like them all.

Mr. O'Brien: The point I wanted to emphasize was this: There is no objection going

over such records they want to submit, but if 8353
that carries with it now the assent to the reliability of those records, of course, we will not assent to any such proposition.

The Court: Nobody asks you to.

Mr. O'Brien: We want a reasonable cross-examination when they come to prove they have got this property.

The Court: The point about the thing is, if there is any doubt in anybody's mind, which the Court feels should be clearly dissolved by brief and appropriate questions, nobody wants to shut that off. But what I do want to stop in this case is the perfectly absurd proposition 8354
that there should be any delay whatever, if this Gas Company shows a thousand feet of pipe, that a qualified expert for the defense is satisfied is worth so-and-so much money, and that it exists and is real. I want to stop pages and pages of testimony as to what that pipe amounts to.

Mr. Hayward: I join you in that.

Mr. Chambers: Yes, and we want to get it from them.

The Court: If the expert goes up to the Gas Company, and the Gas Company says it has a thousand feet of such and such pipe, but is 8355
unable to satisfy the expert that a thousand feet exists, that is another proposition.

Mr. Ransom: Suppose we satisfy them that the pipe exists, but are not able to agree as to the values, then the existence of the pipe ought not to be in controversy, even though there is testimony and controversy as to value.

The Court: I am quite sure you will have no difficulty if you go about it sensibly and in the proper spirit. The position of the defendants

8356 is that of public officers. It is their duty to expedite it.

Mr. Chambers: We want to. I am vigorous in my desire to do it.

Mr. O'Brien: I submit that if they had complied with your request made on May 16th, there would be a whole lot of time saved. We have taken up a lot of time with testimony showing just where this property is. It is all loss.

The Court: I want to know whether the three defendants will accede to my suggestion. I cannot make an order; neither can I make an
8357 order for the complainant to extend its inventory. I have no power. I am endeavoring to bring about a situation where the defendants will have the full information to which they are entitled, obtained under circumstances involving the least possible delay; and also when the case comes on before the Master again, that the inquiry be confined to the real questions in controversy. In other words, Judge Ransom put it quite aptly: If you are all satisfied that a thousand feet of pipe exists, then your only difference and controversy is as to what the value is, which, of course, is the outstanding contention.

8358 Mr. Chambers: And whether it is used.

Mr. O'Brien: Where it is located.

Mr. Hayward: I want to say this: There has been so much talk about candor and about frankness and about showing us the Company's books in Court, and so little co-operation at the gas plants and the office, that I would like to have this a little more explicit, before we leave your Honor's presence. I mean in this respect, if your Honor pleases.

When Mr. Hines, our expert, goes up to the Gas 8359
Company, and they say, "Here now is 1246 feet of 1½ inch cast iron pipe", and these obliging engineers of the Gas Company are there present—do you know what will happen? I do. They will bring in an armful of books and say, "There you will find those items", and now, will they be really helpful to us; will they say where it is and show us these other things? If they will, then I will agree to your Honor's suggestion. If they will not, I will not agree.

The Court: In the suggestion you spoke of, I expect the Gas Company's employees to point out to the defendants the 272 feet existing here and 8360
500 feet there and 100 feet somewhere else; in other words, point out to Mr. Hines the facts as they understand the facts to be, which enabled them to make that total. The engineers will not be called on to give any expressions of opinion about anything.

Mr. O'Brien: Will your Honor kindly specify just what we are to expect is to be done with regard to the items other than mains? Take it where it is buildings.

The Court: I am not going into details at all.

Mr. Ransom: About what your Honor has just said, we are entirely willing to do whichever you 8361
and the defendants wish. We have had this situation, when we put our men working with the staff of the defendants up there, that there was always an intimation that we were keeping a check on what they were doing and spying on them.

If we turn them loose, as we have commonly in the rooms in which they were working, and let them work out their destiny, then we are charged here to-day with not giving as much help as we should. We are willing to put the men who know

8362 the things right in with them and let them help Mr. Hine.

Mr. Chambers: I suggest that the Court go there with the engineer and we will call on them, we will start it—get it started with the Court's aid and instruction. We will say, here in this paper is so much pipe, now tell us what street it is in, when it was laid, its weight and its size.

The Court: I will tell you exactly what I am going to do. The Master at such time as he may deem best will preside at the Gas Company's office, or plant, at which place will be present the experts of the defendants and the experts of or employees
8363 of the complainant, and of course, counsel, if they so desire. With the Master's knowledge of the litigation I will place in his hands the actual working out of the *modus operandi* to be followed in accordance with my suggestion.

I expect, of course, that counsel will co-operate with the Court and with the Master in this way. Meanwhile I will ask the defendants' counsel to place their various memoranda as to comments on the so-called inventory in the hands of Judge Ransom as early as possible, with a view of ascertaining what points are agreed to, or what points are not agreed to, and if there is any matter of dis-
8364 agreement it can be taken up by the Master in the first instance and if he deems it necessary he may certify them to me, and at any time that the Master feels that the matter is one which he can call to the Court's attention, he may certify to me as he has heretofore.

Mr. Hayward: Do I understand by reason of this investigation we are all going to make, that the Master can adjourn from time to time the formal hearings for that purpose, as he sees best?

The Court: My desire is this, that in the first

instance, his hearing, as it were, would be in the 8365
plant, he would proceed there to get this going.

Mr. Hayward: Yes.

The Court: And then after it is going, I don't see that the lawyers can continue the examination. I think the less the lawyers are at the plant, the quicker the work will be done.

Mr. Hayward: Do you mean that that will be part of the printed record in this case, what goes on before the Master up there? These sittings between the engineers back and forth, in which they discussed this thing?

The Court: Yes.

Mr. Ransom: Do you mean all the time? 8366

The Court: No, I mean when he organizes the system.

Mr. O'Brien: Will your Honor permit me to record my objection to the substituting of an examination at the plant by experts for the examination of witnesses after the furnishing of a reasonable bill of particulars?

The Court: I am afraid you misapprehend me. I am only saying this because the other is very helpful to you. I have not made any ruling at all beyond requesting counsel to go up to the plant, and I assume you will go up.

Mr. O'Brien: I certainly will be glad to try one 8367
thing once, but I think we ought to have it understood that we are going up there on the company's promise that what we have required here orally of them today in this inventory, they will supply to us on the spot from the books.

The Court: No, there is no such understanding, and I have got a room full of gentlemen in another case of great importance, and I am going to say something now and then I will adjourn. I have said that you, Mr. O'Brien and Mr. Chambers and Mr. Hayward will give Judge Ransom at your

8368 early convenience a memorandum of what amplification you want of this so-called inventory, some of these things can be readily detailed at once, wherefore I have left it to the Master to arrange to get a method of doing this thing up at the gas company's plant or office. Now, that does not deprive anybody of appropriate examination as to any fact. I do put it to the honor of every one of the lawyers that there shall be no examination except the kind of an examination which is made necessary in the conscientious judgment of the lawyers in order to get the particular facts.

8369

CONSOLIDATED GAS COMPANY OF NEW YORK vs. NEWTON, ETC., *et al.*

Before ABRAHAM S. GILBERT, Special Master.

Met pursuant to adjournment.

Present: MR. RANSOM, MR. VILAS, MR. GOETZ, of Counsel for Complainant.
MR. CHAMBERS, of Counsel for defendant Newton.
MR. HAYWARD, MR. CLARK and MR. NEU-
8370 MANN, of Counsel for Public Service Commission.
MR. O'BRIEN, of Counsel for defendant Swann.

The Master: The first matter I am going to take up, Judge Ransom, is the matter that was under discussion before Judge Mayer. As I understand Judge Mayer's ruling, he has for the time being at any rate declined to direct amplification of the schedules filed by you or to require counsel for the

complainant to furnish an inventory itemized to 8371
the extent requested by counsel for the defendants, upon the theory that the defendants and their engineers and experts could go to the office of the Consolidated Gas Company and quickly find the details that they feel they require in order to check up the claims made by the complainant. What I want to know first is when all counsel and their experts can arrange to be at the Consolidated Gas Company's plant, so that the Master may arrange to hold a hearing there for the purpose of determining whether the information required by the defendants is available.

Mr. Ransom: This afternoon, if you wish. 8372

Mr. Hayward: From what the Master has said, why then did Judge Mayer direct us to furnish Mr. Ransom with a statement of what we wanted him to add to the inventory? Was that just politics, or did it mean something?

Mr. Ransom: He thought I would do it to some extent.

Mr. Hayward: It was not accompanied with an ordinary order.

The Master: I don't think that need be discussed just now. What I want to know is, and I am going to try to straighten this out myself, whether counsel for the defendants can arrange to have their 8373
engineers there tomorrow morning at nine-thirty, say.

Mr. Chambers: I would rather not have it before Monday next. I understood Judge Mayer to say we are to go on here the rest of this week.

The Master: Well, I told him that I understood there was enough proof to keep me busy the balance of this week, and I felt too, and I so told him, that Mr. Teele's examination would undoubtedly take four or five days, if not more, that I thought that——

8374 Mr. Hayward: I want to be heard on that.

The Master: I know your point. I will refer to that in a minute. I felt that we might just as well finish up Mr. Teele's examination, and if it were necessary for the defendants to have an adjournment for the purpose of checking up this inventory, I would rather have that adjournment as the Judge put it, perhaps you didn't get the point so clearly, while I was away. I was told this morning that Mr. Teele's mother had died, and that he won't be here today or tomorrow. Mr. Vilas and Mr. Goetz say they have other witnesses, and they state they have enough to keep us busy today and tomor-
8375 row. That means we can finish up with these witnesses today and tomorrow, or we can go to the Gas Company's plant tomorrow and see whether you can get the facilities that you want.

If we do not go to the Gas Company's plant to-morrow, I am going ahead with whatever proof we have to-day and to-morrow, and I will take Mr. Teele on Monday. I will go to the gas plant then some day next week, and I think Teele will take the balance of the week, in my judgment, when he gets on, and by that time I will know whether I have got to go to Cuba, and if so, when, and then I can grant an adjournment, or Judge Mayer will,
8376 but I will probably do it directly myself, in line with my talk with him, until I come back, and that will give you all the time that you want. That is the situation, whether you want to go up there, I can make it to-day or to-morrow.

Mr. Chambers: I would rather not, your Honor.

The Master: What day next week do you want?

Mr. Chambers: Monday afternoon?

The Master: I would rather make it Tuesday morning than Monday afternoon, myself.

Mr. Hayward: Have you any idea when you would be going to Cuba, so that I can tell the Dis-

trict Attorney's Office up there and get my murder 8377
case up.

The Master: I shall know, I think, by the end of next week, and I should say that the chances are that if I go at all, I will probably be gone the week after next, the 29th, that is my judgment.

Mr. Chambers: If the Master, please, if you would make it Tuesday morning with this proviso, that if Mr. Malthie has to go out of town, then some other day next week, but we can fix it for Tuesday morning with that exception.

Mr. Ransom: May I say this, that if they desire to have any checking or amplification of this inventory it ought to be going forward at the earliest 8378
possible time. I anticipate a great deal of it has already been done, but it ought not to be delayed any more than is necessary, because the engineers and accountants can work while the lawyers are talking in court. That has been true before, and I assume continues so.

Mr. Hayward: How can the lawyers and the engineers work at the same time before the Master?

The Master: We will make it Tuesday morning, the 16th inst. at 9:30 A. M. at the Gas Company's office, 15th Street and Irving Place, Room 1740. Now, at that time I expect somebody from the Gas Company familiar with their various records and 8379
particularly the records affecting this question of this pipe and mains at page 146, I am going to take that up as my test item at that time, and what I would like to have, Judge Ransom, when I get there, is the men in the complainant's employ familiar with the place where we can find the data making up the items shown on page 146, namely, where we can find out where the 1246 feet of one and one-half inch cast iron pipe is, how thick it is, when it was laid, where the charts are and where the records are with reference to it. My idea is if

8380 I find the records are there I shall so report to Judge Mayer.

Mr. Ransom: I would not be surprised if they are in the defendant's room now.

The Master: If I find the information is not at hand, I shall so report to Judge Mayer, and he will make such disposition as he thinks proper. On the other hand the defendants will have their engineers there, the stenographers will be present.

Mr. O'Brien: As we were going through this matter this morning I was looking ahead through the glasses at the subsequent events in the trial of this case having in mind the protecting of the in-
8381 terests of the defendants, so that they would not lose any right that would obtain where this kind of procedure were not adopted, and I think that I made a pretty clear statement as to just the things that we think ought to be in that inventory.

The Master: We will take that up Tuesday morning, when we get there. We will see just what you want, and I am going to see whether it is at hand, and if it is not, I will so report to Judge Mayer, and if you want something that is not at hand, and I think it is something that you—well, whether I have one view of it or another, I shall probably report to Judge Mayer; and if I think you are wanting something I don't think you
8382 are entitled to, I shall so state to Judge Mayer, in the light of my experience in this case, but if I think it is something you ought to have and they haven't got it and can't furnish it, I shall so report.

Mr. O'Brien: The cardinal point I tried to emphasize during my little talk to-day was, that after the requirement for an inventory it was a matter of showing the frank disclosure required and referred to in the rate cases of the United States Supreme Court, secondly, that where it was furnished, it would be time-saving in this case. Now, the

alternative that goes with that, your Honor, would 8383
be that where the detail we have asked for is not furnished, we will have to bring it out in cross-examination of their witnesses. That is the point I tried to hold out right through my talk.

The Master: That was perfectly clear, and in talking with Judge Mayer he had the point perfectly. There were just those two items to it, one, as to how much he could direct should be furnished as a matter of right, and two, how much he would suggest should be furnished to save time.

Mr. O'Brien: Yes.

The Master: He had those things perfectly in mind, and I understand his views about it. I sat in 8384
Court with Judge Mayer for the purpose of informing myself of just what the situation was; what it was all about. I had heard counsel, some counsel talk about an inventory, and some counsel talk about schedules and statements in base rate, and I did not know what it was about, and I sat with Judge Mayer to find out. Here is the situation that Judge Mayer has held, that he will not require a detailed inventory, because he has no power, in his judgment, to do that; he has required counsel to furnish a general statement of the property which they claim they are using for gas purposes, on which they want to base a rate. He had in mind clearly 8385
the fact that a great deal of time would be wasted or saved as the situation was handled. He felt that a great deal of time would have been saved if you had had the kind of inventory you wanted, and he hopes that by the direction he has made you will get that kind of an inventory directly from the books, instead of a copy of it. If you cannot get it, and it cannot be supplied, then the burden will be on the complainant. That is all there is about it. The hope is, and the reason I am going up there is that he believed that it might be possible that you

8386 would get directly from the books precisely what you want, as detailed an inventory as was shown in the Minneapolis gas case, and that was done having in mind two things; one, it would, perhaps, save a great deal of time; and two, that as the engineers checked up these items, they would reply to counsel that they did find this twelve hundred odd feet of pipe, and it would not be necessary for the complainant to prove that, that it might save many hours in the complainant's case, as well as saving the defendant's cross-examination.

Mr. O'Brien: Of course, your Honor, in that connection you will bear in mind one of the vital things
8387 in connection with such data, when it is found to be recorded in the books, is the time it was put in, and the question whether it is now being used by the complainant company, and whether the affiliated companies have pipe in the same street.

The Master: We will try to save all the time we can.

Mr. Hayward: In short, we are to go up there, and with what help you give us, we are to make their inventory. You cannot make it anything else; that is exactly what it is.

The Master: No.

Mr. Hayward: They have furnished an inventory
8388 that is not comprehensive and not intelligible to any human being, and we are to go and make an inventory for them.

The Master: You can call it anything you like. As I understand the ruling of the Judge to be, and I shall so construe it and so enforce it, that he has required them to give you a schedule showing the property used for the base rate. He would like to have had you furnished with a detailed inventory such as you would want; he thought it would save a good deal of time, but he did not feel he had the power to direct it, and it would take perhaps

months and maybe years to get that in shape, and 8389
he felt that counsel for the defendants would get all that by going right to the books and checking up there and making it up, as you say, yourselves.

Mr. O'Brien: Will your Honor permit me to record my objection to the substitution of the physical examination of the plant and books of the Company for the inventory that we have requested?

The Master: Your objection is noted. Have you a witness you want to call, Mr. Ransom?

Mr. O'Brien: Do I understand—before you proceed, let me call attention to a little matter, I think it is a matter of record, before it is forgotten in the work of next week? 8390

The Master: No, I won't have it.

Mr. Ransom: I wish to take an exception on the record to the inaccurate characterization of what has been furnished and as to what the ruling of Judge Mayer is.

The Master: What do you mean by that?

Mr. Ransom: I think counsel has made a wholly inaccurate statement.

The Master: I don't care about counsel's statement. Have I inaccurately construed Judge Mayer's ruling?

Mr. Ransom: Judge Mayer has not in any way said in anything that I understood, his belief that 8391
we should have furnished any such picture book.

The Master: I did not say so. If you would only listen to what I say, or if Mr. Goetz would, he would have understood it. I said that Judge Mayer felt that if it had been possible for you to have given them the kind of a picture book they gave in the Minneapolis case, that it might have saved time. It might have been a good thing. But he did not say you ought to have done it at all, nor do I say so. On the contrary, he said he would not require them to do it, and I so stated.

8392 Mr. Ransom: As a matter of fact, in the schedules which we have furnished, we have furnished a great deal of information of the sort asked for by the defendants, which I have never known to have been furnished in any document that was called an inventory or a bill of particulars in a rate case.

The Master: All right. Call your witness, if you have any.

Mr. O'Brien: Your Honor, before we proceed——

The Master: I won't permit it, Mr. O'Brien.

Mr. O'Brien: Let me state what I have to say to you.

The Master: No, you have a copy of a letter writ-
8393 ten by Judge Ransom to Judge Mayer.

Mr. O'Brien: I have.

The Master: On which you want to comment, and I won't permit any comments. I request you to take your seat.

Mr. O'Brien: I won't make any comment on it, your Honor, except to call your attention to it, and I will sit down, to call your attention to the last part of the first paragraph of that letter.

The Master: I have read it, I know what is in it.

Mr. O'Brien: I want it recorded in the records of this proceeding.

The Master: I have read it and know what is in it.
8394 That is enough.

Mr. O'Brien: Well, I note an exception to your ruling.

The Master: You may note an exception.

Mr. O'Brien: Denying me the privilege of calling the Court's attention to the contents of a letter written by counsel for the complainant to Judge Mayer.

The Master: The Master understands and states upon the record that a copy of this letter was sent to him by Judge Ransom, and he has it in his possession and knows what is in it.

Mr. O'Brien: I take an exception to your Honor's ruling. 8395

Mr. Ransom: As your Honor has stated, Mr. Teele was the witness under examination, and he has been called to Boston by the death of his mother.

The Master: That is on the record, why waste time repeating it?

ARTHUR WILLIAM STARK, a witness for the complainant, recalled, and testified as follows:

DIRECT-EXAMINATION BY MR. RANSOM:

Q. Mr. Stark, since you were last on the stand, have you personally computed the floor areas of occupancy of the General Office Building by tenants having space therein? 8396

A. I have.

Q. Have you made such a computation as of July 1, 1919?

A. I have.

Q. Have you made it in typewritten form?

A. I have.

Q. In so doing, did you compute separately the space occupied exclusively by each tenant, and the portion of the restaurant and telephone space attributed to each tenant?

A. I did. 8397

Q. That is the restaurant space is divided between the respective tenants of the office building on the basis of proportionate use?

A. Only to the tenants who are affiliated companies, not to any outside tenant.

Q. And the telephone exchange likewise?

A. The telephone exchange likewise.

Q. And you have shown on the tabulation prepared by you in separate columns as to each tenant, in the first place the floor space exclusively

8398 occupied; in the second place, the quota of the restaurant space charged to each tenant; and third the telephone exchange space charged to each tenant?

A. That is correct.

Q. And the same thing as to Consolidated Gas Company?

A. Yes, sir.

Q. You have personally made these computations?

A. I did.

Mr. Ransom: I offer this table in evidence.

8399 The Master: Show it to the other side.

Mr. Ransom: I furnished copies, one to each defendant, and they asked to have two. I am willing to have it spread on the record if they want more than one copy.

Mr. O'Brien: You have not offered it.

Mr. Ransom: I have offered it.

Mr. O'Brien: I object to it.

The Master: On what ground?

Mr. O'Brien: As incompetent, irrelevant and immaterial.

The Master: Any objection, Mr. Hayward?

Mr. Hayward: No. It is imperative that I

8400 go to the office at this hour, a lot of people are there, and I want to know about this afternoon's session.

The Master: We will sit from two to three this afternoon.

Mr. O'Brien: I object to it on the particular ground that there is no proof that this building is used and useable in the gas making business, and that there is no proof here that restaurant space is required——

The Master: The objection is noted.

Mr. O'Brien: That kitchen space is required; 8401
there is no proof here as to any detail as to telephone space, how the telephones are used, how many of them there are, and so on, and that without the further direct-examination of this witness, this is purely inadmissible, and after that examination will be inadmissible on the grounds stated.

The Master: Mr. Chambers, any objection by you?

Mr. Chambers: I object to it as incompetent in this regard, that the witness seems to have drawn the conclusion that the Consolidated 8402
Gas Company occupied so many square feet.

The Master: I understand that is a fact he is testifying to. I understand, Mr. Stark, this schedule you have prepared shows the area of the space with reference to which you have already testified as used by the Astoria Light, Heat & Power Company for the accounting room?

The Witness: Yes, sir, that is correct.

By the Master:

Q. And as to which you have already testified, to illustrate, as used for an office for the Dahlstrom Metallic Door Company? 8403

A. Exactly.

Q. And so you have taken all these outside concerns, giving the exact area of space they occupied, and you have already testified, and you have charged the balance to the Consolidated Gas Company?

A. Exactly.

Mr. O'Brien: May I ask a few questions on that?

The Master: Yes.

8404 By Mr. O'Brien:

Q. Did you eliminate from these computations the large section of floor used for lounging room?

A. No, sir.

Q. Did you eliminate any portion of that large room you said was used by draftsmen and plan examiners, where there are only six men in the room?

A. I don't remember any such space.

Q. Did you include in your space here purporting to be occupied by these various companies and apportioned, all of these spaces which were shown
8405 on your cross-examination to be more or less vacant and not necessarily or in actual use?

A. I don't remember any such space.

Q. Have you got the barber shop included here?

A. That is shown as rented to Frank DeFini.

Q. Have you included the auditorium? A. The auditorium is shown there as a separate item under the Consolidated Gas Company's space occupied.

Q. Why did you set it up separately? A. For the reason that it was brought out when I was here before that it was used jointly by the Consolidated Gas Company with other companies.

Q. Did you include in this 190,194 square feet
8406 the floor space occupied in the appliance business?

A. Yes, sir.

Q. And for the storage of appliances?

A. Yes, sir, every foot of it.

Q. What did you do about those rooms that are used more or less in common by all of the companies?

A. I don't know which room you refer to now. Which one do you mean.

Mr. Chambers: The restaurant.

The Witness: The restaurant is shown separately in the second column.

Q. Well, did you make up this quota of res- 8407
taurant space based upon the number of people that took meals?

A. No.

Q. And who they came from?

A. The quota of restaurant space is based upon the number of employees in each of the affiliated companies, or the allied companies.

Q. Then you disregarded altogether the number of employees of the individual companies who indulged in the table d'hote that you furnished in the restaurant?

A. The figure is based on the actual number of 8408
employees in the building.

Q. Solely?

A. Employed by the different companies.

Q. Solely?

A. Solely.

Mr. Ransom: The telephone the same way?

The Witness: The telephone is based on the number of telephone extensions that each one of the companies has on the premises.

Mr. O'Brien: Irrespective of the amount of actual business transacted over the phone, or the extent of the use of the individual companies? 8409

The Witness: That is correct.

Mr. O'Brien: Your Honor, I state in renewing my objection that the diagram that was prepared here was shown on the cross-examination of Mr. Alrich and the cross-examination of the witness Stark entirely faulty, to include the great large space not shown to be actually used and other spaces that are now shown to be necessary in connection with the gas making business, and after cross-examination we re-

8410 newed our objection to the receipt of the diagrams in question on those grounds, and I renew those objections now in connection with this calculation that is supposed to be based upon the diagrams referred to.

Mr. Chambers: I want, since Mr. O'Brien has brought out the apportionment of the restaurant, the telephone space, and so on, to the various companies, I want to add to my objection, that as to those two columns it calls for the judgment and discretion of the witness, and that is a question your Honor has to determine,

8411 how much of the restaurant is a proportionate charge to these companies.

The Master: No, I don't think he has done that, have you?

The Witness: No.

The Master: As I understand it, Mr. O'Brien, he took the actual space used by the Astoria Light, Heat & Power Company for its accounting room and put it on here.

The Witness: That is correct.

By the Master:

Q. You took the exact space that Mr. DeFini used for his barber shop?

8412 A. Yes.

Q. And the exact space the New Amsterdam Gas Company used for its display room and other rooms?

A. Yes.

Q. And so on with the other concerns, right down to the Electrical Refrigerating Company?

A. That is correct.

Q. You then separately figured the auditorium on the thirteenth floor?

A. Yes.

Q. And the auditorium on the fourteenth floor? 8413

A. Right.

Q. And the rest of it you charged to the Consolidated Gas Company, is that correct?

A. Yes.

Q. In the first column?

A. Yes.

Q. In the second column you have "Quota of restaurant space", as apportioned to the various companies, based on the area of space used by them, compared with the total space, is that the idea?

A. No.

Q. How do you make that up? 8414

A. There are approximately 3,000 employees in that building.

Q. Yes?

A. Of that number the New York Edison Company may have 1,600, the Consolidated Gas Company may have 800, the New Amsterdam Gas Company may have 200, and so forth, making a total when they are all totaled, of 100 per cent, and we took the total area of the restaurant space and subdivided it proportionately as to the number of employees in each one of the companies.

Mr. Chambers: It is that apportionment I 8415
object to.

Mr. Ransom: And charged the tenant accordingly?

The Witness: Charged accordingly.

The Master: I have got your point.

Mr. Chambers: It involves his own judgment.

Mr. Ransom: It is not a matter of judgment, it is what these tenants pay, it is charged to them.

8416 The Witness: It is charged to them accordingly.

Mr. Ransom: It is over and above the space which they actually occupy, whatever the proportions are, it is charged down to them, they are charged as having occupied it.

The Master: You did not bring that out?

Mr. Ransom: I think if you follow my questions closely that I did.

By the Master:

Q. As I understand, this schedule shows the amount of area of the restaurant space charged
8417 against these various companies?

A. That is correct.

Q. In their leases?

A. In their leases.

Q. And the same with reference to the telephone space?

A. Yes.

Q. So that the leases provide for the area shown in the first column, and for the additional area charged shown in the second column for restaurant space, and for the additional charge for the telephone space shown in the third column?

A. Yes.

8418 Mr. Ransom: Except the leases do not show the additional space. The leases do not show the square feet of space, the leases provide for the basis of charging that in addition to the other space.

The Master: Suppose you let me find that out from the witness.

Mr. O'Brien: We better get a lease up here.

The Master: How do you get this item of 4,300 square feet opposite Astoria Light, Heat & Power, occupied as restaurant space?

The Witness: That is the proportion of the 8419
space occupied by the restaurant in the building in accordance with the number of employees that the Astoria Company has with relation to the other companies.

The Master: Where do you get the number of employees?

The Witness: The number of employees we get from an executive officer of each one of the companies as these charts are made up from time to time, as it is necessary. Sometimes they are made up each year, as of the first of January; then again they are made up in the 8420
middle of the year. There is no specific time of getting that information, excepting about the first of the year and again about the middle of the year.

The Master: These leases, I do not suppose are in Court, are they?

Mr. Ransom: Yes.

The Master: Let me see one of the leases. Let me see the Astoria Light, Heat & Power Company lease.

Q. Show me the clause in that lease charging restaurant space?

A. (Witness indicates). 8421

Q. The witness refers to Defendant's Exhibit K for identification, and calls the Master's attention to the following language: "The said landlord further agrees to allow the tenant the use of the private elevator, dining room, rest room, barber shop, library and emergency hospital and other facilities under such restrictions and rules as may be made by the landlord for the proper operation of the building." No extra charge is made for these facilities?

8422 A. In figuring the lease for each tenant, it is the practice to include the space which is their proportion of the space of the restaurant and telephone room.

Q. But you don't know how many employees they are going to have, do you?

A. When the leases are made up, they get that data and furnish it to the accounting department so the leases can be made.

Q. Where is there anything about the telephone service in this lease?

A. Other facilities.

8423 The Master: You say the telephone service is under the heading "Other Facilities".

The Witness: Yes, sir.

By Mr. Ransom:

Q. Is the amount of rent which is charged these tenants computed on a floor space basis?

A. That is correct.

Q. And the amount which is charged to these various companies is computed from time to time on such a basis as to include not only the space exclusively occupied by the tenant, but also the quota of restaurant and telephone exchange space which is attributable to that tenant?

8424 A. That is correct.

The Master: How do you fix your telephone, by the number of employees or number of messages?

The Witness: No, the telephone division is made by the number of instruments actually used by each one of the companies as to space, or the space each company occupies.

Mr. Chambers: I make my objection on the further ground that it is founded upon some hearsay evidence, to-wit, the number of em-

ployees of these other companies, and some 8425
further hearsay evidence, to-wit, the number of telephone stations of each of these companies.

Mr. Ransom: But this is the amount from which the tenants are charged.

Mr. Chambers: He does not know how many employees they have.

Mr. Ransom: He knows how many feet they are charged for, and he knows the computations because he makes them.

The Witness: When these computations are made, I usually write a letter to the chief 8426
operator, who is in charge of the telephone facilities of the building, and is responsible to the department in which I am employed, and she sends to me the number of telephone stations in use by each company in the building, and from the information which she gives me, this computation is made with reference to the telephone room.

Mr. Chambers: That last emphasizes my objection.

Mr. Ransom: If these tenants do not want to pay for this space, of course, they did not pay for it; but this simply shows the basis of 8427
the charge, of the reasonableness of the charge. If the reasonableness of the charge should be questioned, that would be a question for the Master to pass upon. But here is what the company charges for, and what these various tenants, some of whom have nothing to do with the Consolidated Gas Company, pay for it.

The Master: They have charged the Astoria Company $1,440 a year. That is what they charged them.

8428 Mr. Ransom: For certain floor space.

The Master: For vaul, No. 3 in the basement and room 1647, as well as these other facilities, private elevators, dining room, barber shop, emergency hospital and other facilities.

Mr. Ransom: If the reasonableness of that charge would be attacked, I assume we should offer evidence to support it. And in order to support it by competent testimony, we should show the number of square feet on which the Company bases that charge, and then it would be for your Honor to say from all the evi-

8429 dence whether that was a reasonable basis, or whether that charge for such a number of square feet was unreasonable,—whether it is to high or too low.

The Master: I do not care about that. I do not think that is the point to which this refers. This witness, when he was on the stand before, testified that certain portions of this building were used by certain other people, and he had then a chart which undertook to show the area of space occupied by these various tenants. I refused to let him testify to it, because he had not prepared it.

8430 Mr. Ransom: He had not computed the figures and had not checked them.

The Master: But my understanding of it was that he would return and testify, as he has this morning, that he has checked the area himself, for these leases, and then I was prepared to admit in the statement showing the area of space used by these other tenants. The first column answers that. In addition, he undertakes to apportion to these tenants the portion of restaurant space and the telephone

space. He testifies that the Company has 8431
adopted a practice of charging with reference to the number of extensions used or instruments, and with reference to the number of employees. I am not at all prepared to say that that is the proper basis of apportionment.

Mr. Ransom: The Company is entitled to show what the basis is. If the basis appears unreasonable, your Honor would have to determine the effect of that. Here are these tenants, and the Company bills them or makes a charge, not merely on the basis of the number of square feet shown in the first column, 8432
but on the basis of the number of square feet shown in the three columns, and in order to determine the reasonableness of the charge, they may show that this Company charges these other companies too much or too little; but the first question is, what does the Company charge for? Of course, the matter has this further bearing: That, of course, as has been shown very clear from the start of this case, we do not contend that the total value of this office building should be charged as a part of the property upon which the complainant is entitled to have returns. 8433

The Master: I am going to take this proof in a different form. I am going to permit the witness to say as a fact that the various companies occupy space which he has set forth in column 1, and then I am going to permit him to say that in accordance with this practice of the company they make the charges or they calculate the quota of restaurant space or telephone space used in the manner he has described, as shown in columns 2 and 3. I am

8434 not receiving the paper as it stands, because I think it is based very largely on a wrong basis and upon facts not in evidence. But I am willing to take those two columns as showing what the company in its own way charges; not what is a proper proportion.

Mr. Ransom: That is all that they hold, to show how the Company makes up this charge. We may be right or wrong.

The Master: To the extent that my ruling is in conflict with the positions taken by counsel for the various defendants, I allow them an
8435 exception. I will permit Mr. Stark to read from this memorandum.

Mr. Clark: Will your Honor allow me to add to the objection?

The Master: Yes.

Mr. Clark: I wish to object particularly to the item allotted to the Consolidated Gas Company, on the ground that it is no evidence to show that that includes only the portion of the building indicated in red on the former exhibit, and that it does not include any proportion in yellow or in green. It seems to me we are entitled to have it stated as to what their
8436 claims are, what is in red and yellow and green.

The Master: I will overrule your objection and allow you an exception. Mr. Stark, you may tell us, reading off from this memorandum,—a copy of which can be given to the stenographer so that he can have the figures accurately—the space actually occupied by the various companies enumerated, namely, the space which you say is occupied by the Consolidated Gas, auditorium thirteenth floor and

auditorium fourteenth floor. In other words, 8437
you may give the first column.

The Witness: Astoria Light, Heat & Power Company, 960 square feet. That is as of January 1, 1919 other than in the restaurant and telephone room.

Frank DeFini, 180 feet.

New Amsterdam Gas Company, 9,015 square feet.

Standard Gas Light Company, 3,564 square feet.

American Gas Association, 1,238 square feet.

8438

National Coke & Coal Company, 1,055 square feet.

United Electric Light & Power Co., 21,492 square feet.

New York Edison Company, 115,685 square feet.

Dahlstrom Metallic Door Company, 1,530 square feet.

New York Mutual Gas Light Company, 6,357 square feet.

Electrical Refrigerating Company, 1,238 square feet.

Consolidated Gas Company of New York, 8439
109,194 square feet.

The Auditorium on the 13th floor occupies a space of 3,485 square feet.

And it occupies a space on the 14th floor of 3,185 square feet.

Mr. Ransom: Totalling what?

The Witness: Making a total of 278,478 square feet.

The Master: Does that include vault space?

8440 The Witness: That includes vault space in the basement.

The Master: Used by these various companies?

The Witness: Yes, used by these various companies.

The Master: As I understand it, in the rental fixed for the various companies you have considered the proportionate part of the restaurant space as applicable to these various companies based upon the number of employees they said that they had?

8441 The Witness: That is correct?

The Master: So that your apportionment is made upon statements made to the company by these other companies?

The Witness: That is correct.

The Master: On that basis, and solely upon this hearsay statement of the other companies, you can read off what your figure is the quota of restaurant space for each of these companies and is included in its rent, the quota of restaurant space charged to these various companies.

The Witness: The quota of restaurant space charged to the various companies is as follows:

8442 Astoria Light, Heat & Power Company, 43 square feet.

Mr. O'Brien: Your Honor is recording our objection to each of these questions?

The Master: Yes, same objection, ruling and exception.

The Witness: New Amsterdam Gas Company, 719 square feet.

Standard Gas Light Company, 122 square feet.

National Coke & Coal Company, 21 square 8443
feet.

United Electric Light & Power Company, 1,512 square feet.

New York Edison Company, 6,720 square feet.

New York Mutual Gas Light Company, 507 square feet.

Consolidated Gas Company of New York, 3,957 square feet.

Making a total of 13,601 square feet.

The Master: As I understand it, included in this rental charge, too, is a proportionate 8444
charge of the telephone space based upon the number of instruments used by the various companies.

The Witness: That is correct.

The Master: You are familiar with the number of instruments used yourselves and those that belong to another department.

The Witness: Yes, I am familiar with the number of instruments used. I could almost go and put my hand on every instrument that is in the building, for the reason that any additional instrument which is placed in that building is placed there by my say-so. That is, each 8445
company, if they want additional telephone facilities will write to W. Cullen Morris, Engineer of Construction, and make a request for the instrument and I pass upon it before the instrument is installed.

The Master: In the manner above described the Consolidated Gas Company, according to these records, apportions the telephone space against the various companies in what manner

8446 and as to what amount of space? Take the third column here?

The Witness: The companies are charged with and pay for the following area of space occupied by the following room——

The Master: When you say they are charged with and pay for, it is included in the rental specified in the lease?

The Witness: That is right. The Astoria Light, Heat & Power Company, 10 square feet.

New Amsterdam Gas Company, 97 square feet.

8447 Standard Gas Light Company, 43 square feet.

National Coke & Coal Company, 10 square feet.

United Electric Light & Power Co., 282 square feet.

New York Edison Company, 1226 square feet.

New York Mutual Gas Light Company, 64 square feet.

Consolidated Gas Company of New York, 634 square feet, making a total of 2366 square feet.

8448 The Master: Go on with the next question.

By Mr. Ransom:

Q. Did you similarly prepare personally a statement as of January 1st, 1919?

A. I did.

Mr. O'Brien: I object to the question as incompetent, irrelevant and immaterial, and also as making an erroneous statement in its reference to the previous testimony. Will the stenographer read the question?

(The stenographer read the question.) 8449

Mr. O'Brien: The testimony of the witness is that he did not prepare personally some of this data but that it came from other people.

The Master: Let the question stand "Did you in the same manner and upon the same data or in the same way prepare another statement?"

Q. Did you in the same manner prepare a statement?

Mr. O'Brien: I renew my objection to any such statement on the same ground.

Mr. Ransom: May the same data be put in here in the same way?

The Master: You offer in evidence the paper 8450
prepared January 1st, 1919?

Mr. Ransom: Yes.

The Master: I shall allow in evidence as if the witness had read it off, first taking the first column, "Floor space occupied", then following that a statement by the witness that in a manner heretofore described, the quota restaurant space charged against the various companies, and following that the statement as if the witness has read off this paper, showing the quota of telephone space charged as he says against these various companies, the 8451
charges for restaurant space and telephone space as I understand it, Mr. Stark, being included in the rent?

The Witness: Yes.

The Master: And the quota of restaurant space is based upon the statement of the number of employees?

The Witness: Yes.

The Master: And the quota of telephone

8452 space is based upon the instruments used by these various companies?

The Witness: Yes.

Mr. Ransom: This is the statement of January 1st, 1919.

Mr. O'Brien: I renew my objection on the further ground that here we have not got the basis even of these calculations that we had with respect to the last subject, that is, the diagrams presented when the witness Stark was on the stand as of July, 1919. There is no basis for this.

8453 Mr. Ransom: We make that offer as of January 1st.

The Master: Objection overruled and exception allowed.

Mr. O'Brien: I think it is another instance of putting the cart before the horse. This business of linking up with the absent witness or absent testimony will only tend to confusion.

The Master: In some instances, as I have said before, I will take the cart before the horse on a promise to connect. In other words, where I deem it of considerable moment and

8454 importance and where it is doubtful if it can be linked up, I shall refuse. But in this instance I will allow it.

Mr. O'Brien: Is counsel going to link it up with the diagram?

The Witness: The statement is as follows:

CONSOLIDATED GAS COMPANY OF NEW YORK 8455

Table showing occupancy of floor areas in General Office Building as of January 1, 1919

	Floor space occupied	Quota of Restaurant space	Quota of Telephone space
Astoria Light, Heat & Power Co..	960 sq. ft.	43 sq. ft.	10 sq. ft.
Frank DeFini.....	480 "	..	..
New Amsterdam Gas Co.....	9015 "	719 "	99 "
Standard Gas Light Co.....	3564 "	122 "	43 "
American Gas Association.....	1238 "	..	..
National Coke & Coal Co.....	1055 "	21 "	10 "
United Elec. Light & Power Co..	21494 "	1512 "	282 "
New York Edison Co.....	115685 "	6720 "	1226 "
Dahlstrom Metallic Door Co....	1530 "	..	..
N. Y. Mutual Gas Light Co.....	6357 "	507 "	62 "
Consolidated Gas Co. of N. Y....	89860 "	3957 "	634 "
Auditorium, 13th Floor.....	3485 "	..	..
Auditorium, 14th Floor.....	3185 "	..	..
Unassigned space.....	20570 "	..	..
	278478 "	13601 "	2366 . "

8456

By Mr. Ransom:

Q. Did you similarly or in the same way prepare a statement as of January 1st, 1918?

A. I did.

Q. Produce it.

The Master: Do you offer it?

Mr. Ransom: I offer that on the same basis.

Mr. Chambers: I make the same objection.

8457

The Master: The data appearing on this will be received in the same manner as the other paper offered, one of January 1st, 1918, and the other of January 1st, 1919.

Mr. O'Brien: The understanding is that this goes out if not connected up?

The Master: That has already been connected up, that is the last two columns.

Mr. Clark: Subject to the same objection.

The Witness: The paper is as follows:

8458 CONSOLIDATED GAS COMPANY OF NEW YORK

Table showing occupancy of floor areas in General Office Building as of January 1, 1918

	Floor space occupied	Quota of Restaurant space	Quota of Telephone space
Astoria Light, Heat & Power Co..	960 sq. ft.	22 sq. ft.	8 sq. ft.
Frank DeFini.....	480 "	..	..
New Amsterdam Gas Co.....	8640 "	622 "	97 "
Standard Gas Light Co.....	3564 "	110 "	42 "
H. Koppers Co.....	342 "	..	..
National Coke & Coal Co.....	1055 "	17 "	10 "
National Commercial Gas Assn..	896 "	..	..
Municipal Lighting Co.....	3175 "	159 "	27 "
United Elec. Light & Power Co..	21492 "	1504 "	284 "
New York Edison Co.....	115685 "	7079 "	1205 "
Dahlstrom Metallic Door Co....	1530 "	..	..
8459 N. Y. Mutual Gas Light Co.....	5819 "	438 "	66 "
Consolidated Gas Co. of N. Y....	89500 "	3650 "	627 "
Auditorium, 13th Floor.....	3485 "	..	..
Auditorium, 14th Floor.....	3185 "	..	..
Unassigned space.....	18670 "	..	..
	278478 "	13601 "	2366 "

Mr. Chambers: Shall I proceed?

The Master: Yes.

CROSS-EXAMINATION BY MR. CHAMBERS:

Q. Do you mean to say that the employees of all these companies were exactly the same on January 1st, 1918, and on January 1st, 1919?

8460 A. From the data which I have in my office, yes.

Q. But you don't know whether it is so or not?

A. It probably changes from day to day in each one of the companies.

Q. But you base it on the same number of employees with a six months' period of difference?

A. Yes.

Q. It does not seem reasonable that it would be so?

A. Quite to the contrary, it does seem reasonable for I know that the employees change from day to day in each company.

Q. In this figure that you gave for July 1st, 1919, 8461
of 109,194 square feet, that was the remainder after you computed the square feet of the others, was it not?

A. That is the number of square feet the Consolidated Gas Company occupied.

Q. Isn't that a remainder rather than the number of square feet they occupied?

A. It must be a remainder because it is the space that the Consolidated Gas Company occupies, and there are no other tenants other than those shown in the list.

Q. Will these sums that you gave, floor space 8462
occupied by the various companies, the restaurant space chargeable to them and the telephone space chargeable, those three added up, will they make up the floor space in the building?

A. All the available floor space in the building.

Q. Does it make up all the floor space in the building?

A. It does not include the corridors and toilet rooms and stair wells, which are not available floor space.

Q. So it does not include all the space in the building, does it?

A. It does not include the stairs nor the toilets 8463
nor the corridors, which are figured for each floor.

Q. Which carries that load of the corridors and stairways?

A. I don't know what you mean when you say "carries that load".

Q. Where is that included in the 109,194 square feet?

A. You mean the area that carries the corridor in that figure? No, it does not.

Q. How did you exclude that?

8464 A. We know what the total area is of all the space occupied by these corridors, pipe shafts, elevators, stair holes, and toilet rooms, and that has been deducted from the total amount of space enclosed by the four walls of each floor.

Q. Do you mean that between January 1st, 1919, and July 1st, 1919, the Consolidated Gas Company occupied 20,570 square feet more?

A. I do, indeed.

Q. Where is that?

A. That is space on the third floor, it is space on the seventeenth floor, it is space on the twelfth floor,
8465 and it is space on the fifth floor of the building.

Q. What is it used for?

A. It is used for the storage of appliances.

Q. All of it?

A. All of it, yes.

Q. Then they have enlarged their appliance business?

A. Except the space on the seventeenth floor, which was shown, or which on the first of January was unoccupied, and it now occupied in connection with some people whose names I don't know, but who are employed in connection with this case.

Q. This gas case?

8466 The Master: That is room No. 1740?

Mr. Ransom: There are several rooms there.

The Witness: Yes, several rooms.

Mr. O'Brien: The same two. Don't call it several.

Mr. Ransom: There are several.

Q. You say that is being occupied by the Consolidated?

A. Now, yes.

Q. You have your telephone space here, the

charge for telephone space the same all the while. 8467
Hasn't that changed?

A. Between the 1st of January and the 1st of July, the data was not taken. There probably was a change may be of one or two phones, but it would not materially affect the figures.

Q. That is your conclusion?

A. It is something that I know because, as I have explained before, if there are any changes in the telephone service in the building, I am familiar with what it is.

Q. You say there were changes in the number of telephone instruments?

8468

A. Possibly there may have been half a dozen.

Q. And if your figures are based on the number of instruments, then to that extent it would upset the calculation?

A. In the fraction of a foot, yes, but not the rental value.

Q. Why not the rental value if it is based on the number of instruments?

A. In my sheets, my figures do not go actually to the last penny or fraction of a foot. The amount of that list is probably within a few cents one way or the other, or a few dollars one way or the other of the actual space occupied by the company. The 8469
fraction of a foot would make no difference.

Q. You cannot say then how many instruments were being used by these various companies because you say they changed and you don't know how many?

A. I know that we have in the building very close to 900 telephone extensions,—in that building, and I know that the New York Edison Company has more telephone extensions than any other company, and I know of any changes that are

8470 made in the number of instruments from time to time as they are made.

Q. Who is this young lady that gives you this information about the telephones?

A. The chief operator who is in charge of the telephone facilities.

Q. Does she work for the New York Telephone Company?

A. No, she does not. She is in the employ of the Consolidated Gas Company.

Mr. O'Brien: What is her name?

The Witness: Her name is Miss Coveney.

8471 Q. On January 1, 1918, you had unassigned space of 18,670 square feet?

A. That is correct.

Q. And on January 1, 1919, 20,570 square feet?

A. That is correct.

Q. Both of those were before this case was started.

A. I don't know anything about when this case was started.

Q. When did they start in to occupy that floor, the floor space that you spoke of as being occupied by the employees of the company?

A. You mean the space which was shown as 8472 unassigned as of January 1, 1919?

Q. Yes.

A. Appliances were brought into that space all during last winter.

Q. I am speaking about the room that was occupied by the people in this case.

Mr. Ransom: On the 17th floor.

Q. On the 17th floor?

A. I cannot give you the exact date from memory of just when they took that space first.

Mr. Ransom: I think that appears in the record.

Q. How did you measure that floor space? 8473

A. When the building was first built, in conference it was decided how the corridor space of each floor——

Q. Just a minute. I will have to interrupt you. Can you tell me how you measured it?

A. Yes.

Q. Or do you need this explanation to do it?

A. I need this explanation to do it.

Q. Then we will have to have it.

A. We decided in conference how much of the corridor space should be adopted for each floor of the building. During that time, or while we were 8474
arriving at a conclusion, I, with a draftsman, made layouts of several different floors, showing a typical corridor which might be adopted, and after the partitions physically had actually been built, we measured one of the floors with a tape, another draftsman and myself, to determine whether or not the corridor, the theoretical corridor which we had established would agree with the corridor which had actually been built. We even went so far as to include half the thickness of the partitions which outlined the corridor in determining the amount of available floor space that there would be on that floor for rental. Since that time I have had occa- 8475
sion when space has been allotted to other companies or people coming into the building, additional space, or when floor space has been changed, we have had objections from tenants as to the amount which was being charged for the space, and we have actually gone down and checked it up with a tape, with their representative.

Mr. Chambers: I move to strike out that testimony.

8476 Mr. O'Brien: Some of the affiliated companies made a kick, did they?

The Witness: In one case, yes.

Mr. Chambers: I move to strike out all that Mr. Stark said in his last answer, and I now ask how did he measure the floor space.

Mr. Ransom: He asked you if you wanted an explanation and you have started it.

Mr. Chambers: He has not answered my question. He has given me conclusions and hearsay and suppositions and theories and I want to know how he measured it.

8477 Q. Or didn't you measure it? Did you measure each floor?

A. I have not measured each floor in the building personally down on my knees with a tape. I have measured a good portion of the floor of several of the different floors in the building myself, holding the tape.

Mr. O'Brien: In addition I move to strike out the testimony of the witness on the statement made by the witness that these calculations were not made personally by him.

Mr. Chambers: I think it should go out now.

The Master: Where are these figures you
8478 gave?

Mr. Clark: At least we should have an accurate measurement of the floors.

The Witness: They are figures that I am responsible for to the officers of the company, and which I am willing to put my name to.

The Master: What is it based on?

The Witness: On figures furnished to me by my assistant and of which I had checked certain portions from time to time, enough to know that they are all correct.

The Master: Have you anything else? Take 8479
this lease to the Astoria Light, Heat & Power Company. It is a lease of Room No. 1647. Don't you know what the area of that room is according to your map?

The Witness: I do.

The Master: Did you check it against the maps?

The Witness: Yes.

The Master: Is the area of Room 1647 the same area as shown by these schedules?

The Witness: Yes, 960 square feet.

The Master: The motion is denied, with ex- 8480
ception to counsel. Next question.

Mr. Chambers: Did you strike it out?

The Master: No.

Mr. Chambers: I do not suppose you want to hear arguments on it?

The Master: You were talking to Mr. O'Brien, and that is why you did not hear the ruling.

Mr. O'Brien: The witness said that he did not measure it himself.

The Master: The witness has testified in substance to the fact that there are drawings of each floor on file in their office, that he has 8481
had occasion to check these drawings from time to time as to the measurement of them. That each room when rented out has reference to these drawings, and to certain area on these drawings, and what he has testified to is that taking these various leases and the rooms which they have rented, and referring to the map, the space is calculated on that area, and on that basis I have allowed the statement.

8482 By Mr. Chambers:

Q. Do you know whether inside measurements or outside measurements are taken? What measurements did you take?

A. I don't know what you mean by inside measurements or outside measurements.

Q. Did you measure it with columns clear?

A. The columns are included in all space.

Q. How did you turn your tape? Is it an inside measurement of the room? By that I mean did you go to the wall, from wall to wall, inside measurement, or did you take half the wall, or did

8483 you go outside the wall?

A. Where I had occasion to measure the room myself personally, as I have done in several instances, the measurement is certain between the plaster line of the exterior wall, and to half the thickness of the partition of the subdividing interior wall.

Q. You do not know whether that is true of all these measurements?

A. I am willing to swear that that is so of all those measurements.

Mr. O'Brien: That is not what you are willing to swear.

8484 Mr. Chambers: That is the way all the measurements are taken.

Mr. O'Brien: That is not the way all of you are willing to swear.

The Master: Mr. O'Brien, stop it. Mr. Chambers is cross-examining the witness.

Q. Why did you include the columns?

A. That is the practice, I have been informed, by all building owners, in leasing space to tenants.

Q. And how did you compute the space occupied by the columns?

A. It was not necessary to compute the space occupied by the columns. 8485

The Master: It is not necessary at all. He is presumed to be paying for the space occupied by the columns.

The Witness: Correct.

The Master: In other words, if I hire a room in this building and there is a column in the middle of the room, I am paying for that space?

The Witness: That is correct.

The Master: The point about all that, Mr. Chambers and Mr. O'Brien, is that whether it does or does not include the columns, and whether it does or does not run to the middle of the partition walls, or to the inside plaster, it was all done on the same basis, so that the proportions would be the same. I do not see any point in wasting time on that. The result would be the same, no matter how you figure it. In other words, all the calculations are on the same basis all the way through. 8486

The Witness: That is correct.

The Master: In that connection, Mr. Ransom, I want to direct your attention to the fact that repeatedly throughout the course of this trial from the beginning, I assumed responsibility myself of objecting to some cross-examination, so as to save time on occasions when you have not said anything. I do not intend to make that a practice in view of the letter written to Judge Mayer, from which the inference might be drawn that I was not expeditious in this case. 8487

Mr. Ransom: That was not the intention.

The Master: That was the fair inference from that letter, and that was the inference that I drew.

8488 Q. The sum of these three columns you have given, is that all of the available floor space in the building?

A. That is correct, 294,445 square feet.

The Master: On the other hand, Mr. Chambers, it will be almost impossible for me to keep to my resolution when I hear counsel repeating the question three times. That has been answered three times in one form or another.

Mr. Chambers: I know these gas companies better than you do, if the Master please.

8489 Mr. O'Brien: You sometimes get three answers.

The Master: You will very rarely find when I say something has been answered before that I am incorrect.

Mr. Chambers: But I ask it in some different form. That is all.

Mr. O'Brien: I may overlap in some things here, your Honor, but it has to be brought out my way, and you will pardon me if I repeat some of them.

The Master: I will not pardon you, but I will sustain an objection if it is made.

8490 By Mr. O'Brien:

Q. Mr. Stark, what becomes here of all the hall space; you charge that up in the lavatories?

Mr. Ransom: I object to that question. It has been gone over twice to-day, and on a previous day.

The Master: I sustain the objection.

Mr. O'Brien: It was shown on the diagrams in white, your Honor.

Q. I want to know does the figure here on the Exhibit, of July 1, 1919, of 1,009,194 square feet,

include the hall space, elevator space, lavatory 8491
space,—any other space that is used in common, or part of it?

Mr. Ransom: I object to the question as already covered.

The Master: The objection is sustained because the witness has very clearly stated that it represents the available rental space and does not include the items to which you refer.

Q. Is there another diagram being prepared to cover the space that is used in common, such as elevators, halls, stairways, and lavatories?

Mr. Ransom: I object to the question as in- 8492
competent, immaterial, and not within the scope of cross-examination.

The Master: Objection sustained.

Mr. O'Brien: I would like to ask counsel now on what basis they are going to put in the value of the building here? I called the Court's attention this morning to one page of the so-called inventory that referred to a division of the supposed valuation of that building.

The Master: I will not permit inquiry to be made by one counsel of another while cross-examination or direct-examination is going on. Counsel will please proceed with the cross- 8493
examination.

Q. I call your attention to sheet No. 3 of Exhibit J for identification, and ask if you have got the computations with you for the red space on that floor; if not, will you proceed and show us how you computed the space?

A. I have not the figures with me showing the number of square feet on that floor. Shown in red?

Q. Yes.

A. No, I have not that with me.

8494 Q. Will you take your pencil and paper and proceed to make the computation for us?

Mr. Ransom: I object to the question in that it calls for the witness to occupy a considerable period of time in doing something that is not within the scope of cross-examination.

Mr. O'Brien: Your Honor, we are called upon to accept these figures as his computation of space.

The Master: Yes; the objection is sustained. You can have your engineers check it up from this diagram.

8495 Mr. O'Brien: I submit, your Honor, that I have got a right to examine the witness' accuracy and his reliability on these figures.

The Master: I will sustain the objection.

Mr. Chambers: I take an exception.

Mr. Hayward: Exception.

Mr. O'Brien: Exception.

Q. I will ask the witness to take the space of the Standard Gas Light Company, as shown on that Exhibit, and make a computation of the space occupied, as shown there, by said company and to show us that 8,640 square feet shown on the exhibit for January 1, 1918, and say whether it is a correct

8496 one.

The Master: I will tell you what I will permit you to do, Mr. O'Brien. If you want to spend the time and you think it is at all important, I will let him take one of these smaller items, take the Astoria Company that is on the 17th floor.

Mr. O'Brien: Will your Honor take some small space, but something that presents more that a rectangle? I do not want to consume a whole lot of time going over every one of these

diagrams, but I want to make a fair test of 8497
the accuracy of this witness. We found Alrich
to be full of errors.

Mr. Ransom: I object to the comment of
counsel regarding the witness Alrich.

The Master: You take the Astoria Company
on sheet 6,696 of that Exhibit and calculate the
area for Mr. O'Brien.

Mr. Ransom: That is Exhibit 186.

The Witness: Let me bring to your atten-
tion the fact that it is almost impossible to do
this accurately, for the reason, first, that there
are no dimensions shown between the parti- 8498
tions which block off this space, and this draw-
ing is not quite to scale, as was brought to
attention when it was brought to evidence.

The Master: Where did you get the figures
on which you based your computation?

The Witness: From the quarter scale draw-
ings of the building, which are accurately
drawn to scale.

Q. Have they been produced in evidence here?
A. No, sir, they have not.

Mr. O'Brien: There again, your Honor, the
bases of the computation are not in evidence
and the figures are not here. We have just got 8499
to take his word that they are correct. I move
now that the exhibit be stricken from the rec-
ord.

The Master: Let us see how near it comes on
this.

The Witness: That space shown on this
drawing, No. 6696, in yellow, is attributed to
or occupied by the Astoria Light, Heat &
Power Company, and is approximately 809
square feet.

8500 By the Master:

Q. You have taken what scale?

A. I have taken the scale as indicated here, one-sixteenth; that is not quite accurate.

Q. But based upon that scale and that part colored in yellow, you make how many square feet?

A. 809 square feet—807 square feet.

Q. And how much did you testify it was, according to your other computation?

A. That, including the space occupied in the basement is 960.

Q. And what is the space occupied in the base-
8501 ment?

A. A small vault.

Q. How big is the vault?

Mr. O'Brien: One is twice as large as the other; is it not?

The Witness: Yes, and I do not know which one it is. I can check it very quickly. (After computation) 938.4. You cannot get it any closer than that.

Q. As you figure it from this plan?

A. Yes.

Q. It makes 938.4 square feet?

A. Yes, sir.

8502 Q. What did you figure it on; what scale?

A. From the quarter scale drawings, 960 square feet.

Mr. O'Brien: Your Honor, if the same proportion of errors are going to creep into these figures, we will have the same miscalculation.

Mr. Ransom: They are not errors; that does not prove any errors.

Mr. O'Brien: That 960 is about one-one hundredth part of the space occupied, according to his own calculations, by the Consoli-

dated Gas Company, and if the same proportion of error is in there, we will have one hundred times that number of square feet as an error. 8503

Mr. Ransom: That is on the basis of this diagram which does not pretend to be drawn to scale. There is a difference of 22 square feet out of a total of 294,445. The percentage of variance is slight. The 960 square feet is what the Astoria pays for.

The Master: I will let the testimony stand.

Mr. O'Brien: Your Honor, I submit the complainant should be required to produce here the papers upon which these calculations are based. 8504

The Master: I have made my ruling. This witness has testified that he knows what the area is and he testified that is the area, his memory being refreshed by other matters that he has not got in court, but he is willing to swear that those figures are right, and I will take them.

By Mr. O'Brien:

Q. Have you produced any calculation for the figures on these three exhibits? What have you got in the bag you referred to once or twice? 8505

A. There is nothing there but the leases of the buildings.

Q. Did Mr. Moran, of Patterson, Teele and Bennett, make these calculations for you?

A. I do not know Mr. Moran. I never met the gentleman.

Q. Well, his name is on the envelope you have, is it not, the big envelope?

A. No, that is W. Cullen Morris, 124 East 15th Street, New York.

8506 Q. The calculations on which you base these, that is, the amount per floor, have you got that with you? Take the Consolidated Gas Company's space, purporting to be 109,194, as of July 1, 1919; have you got the floor, the calculations for each floor with you?

A. No, I have not.

Q. Have you any data that we could take to find out whether your calculations here are accurate?

A. No, I have not.

Q. Will you tell us just what the maps were and where they are on which you base these calculations?

8507 A. They are in the drafting room, in the file room; in the files of the drafting room of the Consolidated Gas Company.

Q. Were they part of the diagrams that were brought here when the witness Alrich was on the stand?

A. I am quite sure not. He may have had floor plans of the building.

Q. Is it a separate set that covers the building now, or how are they designated?

The Master: What are they known as in your office?

8508 A. They are known as the architectural plans of the general office building, and there is one for each floor of the building. It is kept up to date and as any changes are made in the partitions of the floors the tracings are changed accordingly.

Q. In what respect do they differ from the plans filed with the Building Department?

Mr. Ransom: I object to the question as quite immaterial.

The Master: I will allow that.

A. They differ in this respect: The plans which

were filed originally with the Building Department 8509
had generally shown the partitions which it was supposed would be placed in the building. Since the original filing of the plans there have been changes made on several floors, additions. There have been few, if any, removals of partitions on any floors. The changes have been principally additional terra cotta partitions. They are all terra cotta except in one instance there are some wood partitions—which is furniture and not partitions.

Q. Was this exhibit showing the diagram of the building which the vari-colored arrangement for the different tenants made up from the same drawings?

A. That was made up from my knowledge of the 8510
space occupied by the different tenants of the building, and in accordance with the leases.

Q. Do these lines here showing the spaces conform with the architect's diagram or draft that you have just referred to?

A. They conform with the architectural plans of the building, yes. They were when they were made lithographs of the architectural tracings of the building, architectural plants.

Q. May this exhibit, then, Defendants' Exhibit J for Identification be relied upon for the purpose of verifying your figures? 8511

Mr. Ransom: Complainant's Exhibit No. 186.

Mr. O'Brien: Complainant's Exhibit 186.

A. Why, yes.

Q. How do you account for the error that appeared in the figures that you made from this exhibit of the Astoria Company's space when compared with the amount that you have on the three exhibits offered in evidence this morning, showing 960 square feet?

8512 A. Because those drawings are drawn to 1/16 scale and it is impossible for any man, and I defy any man, to check here or to make accurate figures from 1/16 inch scale drawings. It cannot be done.

Q. Why were these brought into court, showing the picture of the space occupied and not the architectural drawings that show us with the proper scale space occupied?

A. I think I am responsible for that particular set being used, and the reason I suggested that that be used was on account of its convenience, rather than an enormous quarter scale drawing
8513 which would be four times or eight times that size.

Q. Then you were not thinking of accuracy?

Mr. Ransom: I object to the question. This was not offered to show area.

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. Does this space of 6,357 square feet charged up to the New York Mutual Gas Light Company cover the building next door?

A. It does not.

Q. Is the building next door included in any part of these three exhibits?

A. No, it is not.

8514 Q. Will you take the space occupied or shown to be occupied on Exhibit 196 by the United Electric Light & Power Company, and verify this figure which you have on your exhibits of 21,492 square feet as of July 1, 1919, 21,491 square feet as of January 1, 1919, and 21,492 square feet as of January 1, 1918?

The Master: The Master will rule that we have had sufficient on that line. I permitted one space to be taken as a test, the Astoria space. That indicated that these figures in-

dicated by the witness could not be reliably 8515
checked against this exhibit, and that is all that could be accomplished by that question.

Mr. O'Brien: Could not be checked, you mean?

The Master: Reliably checked by this exhibit. Your question would simply duplicate that proof; therefore, I will not allow it.

Mr. O'Brien: Your Honor, I move to strike out all the witness' testimony, unless they produce the calculations on which it is based, and the diagram, the architectural diagrams from which they were made.

8516

The Master: Motion denied, with exception.

Mr. O'Brien: In the absence of those papers, I think there is not any use to be served in cross-examining the witness. When did you make these figures, Mr. Stark?

The Master: Those maps and drawings are all, presumably, accessible to counsel for the defendants. I have no doubt that whether the witness answers one way or another, they will be checked.

Mr. O'Brien: Well, that is an instance of the cardinal mistake made in the rate cases in assuming that the defendants are going to take 8517
the burden of proof.

The Master: Do not let us get into that. They have testified to figures. If you have any doubt about it, you have an opportunity which is not ordinarily found in the trial of a lawsuit,—you have still the opportunity to go up into the complainant's office and call for those drawings, check it up over and above the facts elicited from this witness. That is something

8518 which is not ordinarily found in a lawsuit. I think your rights will be amply protected by that.

Mr. O'Brien: Here is the point: They do not produce any papers to quiz the witness on. All you have here is his bare statement and that the company agrees with them.

The Master: The Court adheres to its ruling.

Q. When did you make these figures, Mr. Stark?

Mr. Ransom: I object to the question as immaterial.

The Master: I will let him answer that.

8519 You made them since you were on the stand last?

The Witness: I made them since I was on the stand. Immediately I got off the stand I refreshed my memory on a great many of them, and I did not complete the work until very recently.

Q. These would be more reliable than your testimony of that vari-colored paper?

A. No, I checked up the vari-colored paper and found that all of the space purported to be shown there in the different colors for different purposes is correct.

8520 Q. Why do you leave out the unassigned space from this exhibit relating to July 1, 1918?

Mr. Ransom: I object to the question as already answered.

The Master: I do not think that particular question is. We will take a recess until two o'clock.

Recess was then taken until two o'clock P. M.

AFTERNOON SESSION. 8521

ARTHUR WILLIAM STARK resumed the stand.

By Mr. O'Brien:

Q. Mr. Stark, when did you get these figures up, or did you do the calculating personally?

A. I started to check the figures the day after I left the stand, and I completed the work only yesterday.

Q. You had a little doubt, did you, about the diagrams when you started to figure?

Mr. Ransom: I object to the question.

The Master: I allow the question. 8522

The Witness: No, I hadn't any doubt about the diagram, Mr. O'Brien.

Q. Well, you had not prepared the figures, anyway, in preparation for your first testimony on the stand?

A. It was not necessary for me to prepare figures to make the diagrams. The diagrams could be made without checking the actual figures.

Q. You were not directed to prepare it when you first came to the stand?

A. To prepare what?

Q. This was an after-thought, this preparation of these figures? 8523

Mr. Ransom: I object to the question, the record shows we tried to get in these figures in a form which the Master thought was objectionable.

The Master: Objection sustained.

Q. Why didn't you bring your figures with you, on which you made these estimates?

Mr. Ransom: I object to the question as incompetent, irrelevant and immaterial.

The Master: Objection sustained.

8524 Mr. O'Brien: Exception.

Q. Didn't you expect to be asked how you made these calculations?

Mr. Ransom: Objected to on the same ground as before indicated.

The Master: I will allow this question.

The Witness: Yes, I expected to be asked how I made the calculations.

Q. Didn't you expect to be catechised as to the elements and spaces on each floor?

A. Yes.

Q. Asked something about them or did you think they were just going to be accepted?

8525 A. No, I expected to be catechised about it.

Q. Did anybody tell you not to bring them with you?

A. No.

Q. Did counsel tell you not to bring them with you?

A. No.

Q. Are they there in your office now?

A. Yes, all of the figures are in the drafting room at the present time.

Q. I mean your figures?

A. Yes.

8526 Q. Could they be found there and verified?

A. I think so.

Q. Who has them?

A. Why, they are in—part of the figures which are made are in my desk and the rest of them are in the drafting room in my draftsman's notebook, which I checked.

Q. You have them there floor by floor?

A. Yes, they are there floor by floor, every floor in the building.

Q. By the way, do the leases specify the square 8527
floor space of each lessee?

A. I think not, I think that the leases describe, for instance——

Q. The room numbers?

A. In some cases room numbers, in some cases where there is more than one floor taken it describes it by floors.

Q. Well, there is no way to check them up with the leases, then, is there?

A. Why yes there is.

Q. Do the architectural drawings from which you say you made these calculations contain the numbers of the rooms? 8528

A. No, not in any case.

Q. How could you take the leases to use them?

A. For instance, the lease of the Astoria Light, Heat & Power Company described space in Room 1643, I think, or 1643 or 1644 is the number of the room, also a certain vault in the basement.

Q. Do these architectural drawings from which you made your calculations show the number of the room?

A. No, it does not.

Q. Of the Astoria Light, Heat & Power Company? 8529

A. No, it does not.

Q. Have they got the name Astoria Heat, Light & Power Company there as indicating the space that is used by them?

A. Well, I think the name would appear in each case on the drawings that we have who occupies the space.

Q. Can you state that positively, that it does appear?

A. It might not in some cases, the change might

8530 not have been made where tenants had a certai
number of square feet on a floor and then it wa
subdivided or a portion of it taken by anothe
tenant, the change might not have been made show
ing two different names.

Q. Now, some one going over your work to verif
these figures can sit down and will have to hav
what? If he has the architectural diagrams an
the leases, has he got enough to make your calcula
tions and verify them?

A. No, I don't think he would have quite enoug
then. I think that he would have to actually g
8531 and see the space which is occupied by these differ
ent tenants.

Q. And make notes?

A. And make notes, and then go back.

Q. And make measurements?

A. Not necessarily make any measurements, be
cause the larger scale drawings can be checked up
quite accurately as to the exact area.

Q. Well, he would have to physically go from
floor to floor and check off the diagram?

A. I am quite sure to do it intelligently it would
be necessary, yes.

Mr. O'Brien: Your Honor, I don't think our
8532 duty in this case as defendant contemplates
the requirement that we go to that trouble, and
I think in view of what the witness has just
now stated that his testimony should be
stricken from the record unless they produce
the maps from which they made these dia
grams and his own calculations of them, so
that we can make reasonable tests. It won't
take more than say half an hour on the stand
to verify these figures and have tests made
from them, and would perhaps save that much

time and expense, and I will guarantee that if 8533
the witness is produced tomorrow to be through with him in less than thirty minutes.

The Master: Motion denied.

Mr. O'Brien: Exception.

The Master: Anything else from this witness?

Q. Did you testify in your direct as to the conditions of space on January 1, 1918?

A. Yes.

Q. Your diagram being Exhibit 186 does not show the conditions as of that time, does it?

A. No, the diagram, this colored diagram, shows 8534
the condition as of July 1, 1919.

Q. Generally speaking, is there much difference between the two dates in the occupancy?

A. Very little. None to speak of. There is a slight change here and there, but it amounts to almost nothing as compared with the total area of the building.

Q. These working drawings, these architectural drawings which you used for the purpose of allotting the space and which you say were in part the basis of your calculations, were they changed from time to time, according to new assignments of space? 8535

A. They may not be changed the exact date on which the new space is taken. It may be four weeks, it might be six weeks, at times afterwards, that they were changed, but they are eventually changed. The reason for that is that the drafting room may be so busy with other work that they cannot get at that particular job to complete it.

Q. Take the space on the auditorium floor, which I think was formerly vacant and I think latterly is being given over to the American Gas Society, is

8536 there a note made on the architectural drawings indicating what it was formerly and when the change was made in the use?

A. That change has not been made as yet on the drawings. However, the information has been given to the Assistant Secretary of the Company, so that he could draw a new lease for the change of space for the American Gas Association. I wrote that memorandum, I think,——

Q. Would these diagrams give us an historical statement of the uses of the building during the years since it was first occupied?

8537 A. Very closely to the correct record; yes, sir. Within a few weeks, one way or the other, for each space.

Q. Was this building occupied, actually used, before the alterations were made, adding on a number of stories?

A. I do not quite get your question.

Q. Well, it was originally a 12 story building, was it not?

A. Only a very small portion of it; 60 feet front on 15th street; only a small portion of this building existed as a 12 story building. That was 60 feet front on 15th street about in the middle of the

8538 total length of the building.

Q. Both ends ran to 19 feet from the beginning, did they?

A. Yes, sir.

Q. This 60 feet frontage, is it in the middle or on the Third avenue end of the building?

A. No, it is about in the middle, almost exactly in the middle.

Q. Was the original building built with a 19 story structure on each end and a 12 story structure in the middle?

A. That is correct. 8539

Q. And that was afterwards filled in by the alteration?

A. No. You are just a little bit confused. Originally we had a 12 story building which was in the middle of the plot occupied by the 19 story building. When the change was made we built 19 stories at either side of the 12 story building, and added seven stories to the 12 story building, all as one operation.

Q. Then the original 12 story building was occupied for how many years?

A. Why, the original 12 story building was oc- 8540
cupied from—I am speaking from memory, from 1911 to 1914.

Q. Have you in these same architectural drawings, the history of the occupancy at that time of the building 12 stories high?

A. We had no foreign tenants at that time in the 12 story building, as I recall, and it was not necessary to keep such a record. It was entirely occupied by the Consolidated.

Q. No affiliated companies?

A. I think the Astoria accounting department had a small room there similar to the room they now have in the larger building. That is the only com- 8541
pany I remember that occupied any part of the 12 story building.

Q. Were you in charge of the allotment of space there or did your duties in that respect come into action in the last few years?

A. Why, yes, I was in charge of the allotment of space in the 12 story building. I prepared any space which was occupied in the 12 story building, for whoever occupied it, and knew of each occupancy.

8542 Q. Is there a book kept where you have this data gathered?

A. I do not get that.

Q. Do you keep a book in which you collate all this data about floor space?

A. No, there is no particular book kept such as the books which are kept in the accounting department for certain purposes. There is no such book kept, record of the space used by the companies.

Q. Is there any record kept of the number of people, strangers, visitors, patrons, customers, as well as employees who use the building?

8543 A. No, I do not think there is. It would be impossible to check up the number of people who go in and out of the building from day to day. In connection with the restaurant department, if you go up there, you are asked to sign a book showing the date of your visit.

Q. Each day?

A. I think that record is kept each day. Of course, there are some people get up there that the managing staff does not get to, and he does not get their names; but he has a record of the different people who have visited that restaurant purely to see a gas kitchen in operation, who are

8544 contemplating buying gas equipment, and they go up there to look over the gas equipment in that restaurant. It is part of our sales arrangement for the Gas Company.

Q. Do you keep tabs on the number of employees who go up there too?

A. We can tell you exactly how many employees eat in the restaurant each day, yes. We keep an accurate record of that.

Q. And of the companies that they come from?

A. We cannot tell it by the day, but we can tell

it for different periods, for the reason that purchas- 8545
ing agent of the Consolidated Gas Company issues a certain number of tickets to each one of the companies who may use the restaurant, and when that number of tickets has been entirely used up, we know, for instance, that so many hundred employees of the Edison Company have used the restaurant.

Q. Do you use that as a basis for distributing and allocating to the different companies the losses sustained in the restaurant.

Mr. Ransom: I object to the question as incompetent.

A. That is something I do not know anything 8546
about. I do not know whether there are any losses.

Q. You have not seen the records that are in evidence here?

A. I do not see the records of the accounting department at all. I am not familiar with them.

Q. That is not made in any way, even for purposes of computation, the basis of your calculating, how much of the kitchen or restaurant space should be charged up to the different companies.

A. By the number of people who actually eat there?

Q. Yes. 8547

A. No, it is not. It is based upon the number of employees in the building, employed by the various companies who may eat there if they will.

Q. I will ask you again if you keep a record apart from this diagram or architects' drawings of the allotment of space?

Mr. Ransom: I object to the question. It has been gone over repeatedly.

The Master: Objection sustained.

Mr. O'Brien: Your Honor, I will suspend

8548 here and ask the privilege of recalling the witness for cross-examination after an examination of the architects' drawings referred to.

The Master: You have not any further questions to ask on cross-examination at this time?

Mr. O'Brien: Well, I would like to request that he be brought here to-morrow morning.

The Master: No.

Mr. O'Brien: With the diagram I have referred to and the calculations he has made, so that we justify his figures.

The Master: No.

8549 Mr. O'Brien: And see the drawings here. They may be different from the drawings produced by Alrich, and different from the diagram 186.

The Master: No; as I understand counsel has not any further questions to ask on cross, the witness is excused.

Mr. O'Brien: I except to your Honor's ruling in regard to my request to have the witness brought here with the papers in question, and the papers referred to by me.

CROSS-EXAMINATION BY MR. CLARK:

Q. Does this figure that represents the amount
8550 of space occupied by the Consolidated Gas Company include the space occupied and colored in red on this Exhibit 186 only?

A. To which tabulation do you refer?

Q. Exhibit 186. That is the original exhibit.

The Master: No, but he has three tabulations in that exhibit. Let us know which one you refer to; that of January 1, 1918, January 1, 1919, or July 1, 1919?

Mr. Clark: July 1, 1919.

A. July 1, 1919; that is correct.

Q. Does it include any other space? 8551

A. It does not include any other space.

Q. Does it include the space marked in green on this diagram?

A. It includes the space marked in green; it does.

Q. Does it include the space on the second floor that is used by the Boy Scouts?

A. It does.

Q. And the space on the 13th floor that is used as a lounging room and restaurant?

A. It does.

The Master: Rest room, isn't it?

Mr. Clark: Rest room, yes.

Q. Does it include the space on that floor used 8552 as a coat room?

A. It does.

Q. Did you figure the space used by the Consolidated Gas Company or did you subtract the amount of space used by the other companies from the total amount of space in the building?

A. In making this tabulation I figured the space occupied by the other companies, already knowing that the total area of the building, from previous calculations, was 294,445 square feet and the deduction would be, or the difference would be the space occupied by the Consolidated, as there are no other 8553 tenants.

Mr. Clark: I respectfully move that this figure of space occupied by the Consolidated Gas Company be stricken out, as it does not show that he made any calculation based upon the map, nor the space actually occupied by the Consolidated Gas Company. It appears from his evidence that he has included in the space even as calculated by him space which is used by other companies, space which is used

8554 for purposes extraneous to the gas business, and other space which is not properly applicable.

The Master: Motion denied.

Mr. Clark: I take an exception.

Q. Mr. Stark, the United Electric Light & Power Company appears on two of these sheets, January 1st, 1918, and July 1st, 1918, as having 21,492 feet of space. On January 1st, 1919, as having 21,491 feet?

A. I should say that was a typographical error.

Q. Do you know whether these different tables all foot correctly?

8555 A. Why, I presume that they foot correctly. I footed them up myself, and I think that they do foot correctly. If there is a typographical error in the space of the United States of two feet, there would be a corresponding error in the Consolidated space of two feet, as it was a deduction.

Mr. Clark: That is all of my questions.

REDIRECT-EXAMINATION BY MR. RANSOM:

Q. Mr. Stark, you were interrogated as to changes in occupancy and tenancy during the year 1918. Can you state what if any changes there were and of what date?

A. May I have the 1918 and the 1919 sheets?

8556 Q. Yes.

A. The H. Koppers Company, who are shown to occupy 342 square feet in January, 1918, vacated the space in September, 1918. Immediately the H. Koppers Company vacated the space in September, it was taken by the National Commercial Gas Association from that time, and made the total rental space of the National Commercial Gas Association from September the total of 342 square feet and 896 square feet, which is 1,238 square feet.

Q. Any others?

A. The Municipal Lighting Company, which is 8557
shown to occupy 3,175 square feet in January, 1918, vacated that space on May 31st, 1918, and the space was immediately taken over by the Consolidated Gas Company for its purposes.

Mr. Chambers: I move to strike that out. What purpose has it?

The Master: I will let it stand.

The Witness: I can explain it.

Q. What other space has since been occupied by the Consolidated,—is that correct?

A. It has been occupied and used by the Consolidated.

8558

Q. What other changes have there been? Has there been any change in the electrical refrigerator company space?

A. There is also a change in the New York Mutual Gas Light Company's space during the year 1918. They occupied on January 1st, 1918, in the building, 5,819 square feet, and in about September of that year they took additional space, making a total of 6,357 square feet. The New Amsterdam Gas Company also took additional space in the building on the third floor during 1918. They originally occupied 8,640 feet, and they took additional space amounting to 9,015 square feet. 8559

The Master: That is the total space?

The Witness: The total space, 9,015 square feet.

Q. Was that taken in September of 1918?

A. About the 1st of September, 1918.

Q. Was there any change in the space of the electrical refrigerator company during that time?

A. Not during the year 1918.

Q. That was on the 1919 schedule, the change

8560 concerning which you testified when you were previously on the stand?

A. Yes.

Mr. Ransom: That is all.

By Mr. Chambers:

Q. What did you mean when you said "its facilities"?

A. The Municipal Lighting Company does not any longer exist as far as I know. The Municipal Lighting Company, while they did exist, carried on a business of selling gas lighting fixtures and renting gas lighting fixtures. For some reason for
8561 which I do not know, the Municipal Lighting Company no longer carries on such business and it is now carried on by the Consolidated Gas Company, and the space which the Municipal Lighting Company used for that purpose is now used by the Consolidated Gas Company for the same purposes.

Q. You mean the Consolidated took over the business?

A. The lighting business of the Consolidated Lighting Company.

Q. The appliance business you mean?

A. The lighting business, not appliances, but lighting.

8562 By Mr. O'Brien:

Q. Mr. Stark, do you keep a record of other space in this building used by this company and allotted them?

A. You mean, Mr. O'Brien, the Consolidated Gas?

Q. I mean where the National Coal & Coke Company or the Municipal Lighting Company, so-called, or any other company or person used the property belonging to the complainant in places

other than at 15th Street and Irving Place, do you 8563
keep a record of that?

A. None whatever.

Q. Is that within your domain?

A. No, it is not. I have nothing to do with anything outside of the building.

Q. When did the Municipal Lighting Company as such go out of business?

Mr. Ransom: I object to that.

The Master: I will allow it.

Mr. Ransom: It is purely a question of corporate law.

The Master: No, he is talking about discon- 8564
tinuing operations.

Mr. Ransom: He can testify when they went out of the building.

The Master: That is what he means.

A. As far as I know the Municipal Lighting Company went out of existence in that building on May 31, 1918. Whether they are out of existence or not I don't know. They ceased to occupy space in that building.

Q. You don't know of any other space that they are supposed to be occupying?

A. I do not.

By Mr. Ransom: 8565

Q. Mr. Stark, in the figures you gave covering January 1, 1918, and January 1, 1919, you gave certain areas for the Consolidated and certain areas of unassigned space. Have you as to those two figures computed the space occupied by the Consolidated and also the amount and area of unassigned space?

A. The unassigned space was actually computed.

Q. You knew the amount of unassigned space?

A. Yes.

8566 Q. And then you computed the amount of the Consolidated space after that in the manner which you have indicated?

A. Yes.

By Mr. O'Brien:

Q. You mean you gave the remainder or charged it up to the Consolidated, is that it?

A. As there were no other tenants in the building, they must have occupied that space, for we originally had in that building 294,445 square feet of available rental area.

Q. Where is that figure?

8567 A. The figure is in the general office of the Consolidated Gas Company, in the drafting room.

Q. And if that figure was not correct the deduction you have made as to the space occupied by the complainant company would be incorrect?

A. That is correct, it would be incorrect if that figure were not correct?

Q. You made no other calculations of the Consolidated Gas Company's space except in that manner you have just stated?

A. To my mind it was not necessary.

Q. Did you?

A. I did not.

8568 Q. Did you?

A. I did not.

Q. You did not confirm it by actual computation of the space shown on the architectural drawings you have referred to?

A. No.

Q. Did you make up your diagram the same way and mark red everything that was not yellow and blue and white?

A. In making up the diagram it was an entirely

different operation. We go through the drawings 8569
by floors and know who occupies certain rooms, in accordance with the location of the partitioned plans, or of the partitions shown on these drawings, and in order to do that one must be familiar with each square foot of space which is occupied in the building.

Q. I notice on this diagram you have on some pages, I mean on Exhibit 186, on some pages the note, "All dimensions are given to rough terra cotta or brick work unless otherwise noted." You have that on some of these sheets and not on others?

8570

A. That is a note used on all of the drawings which were used by the contractor who built the building in order to guide him in his work, and has no reference at all to the space as occupied.

Q. And your dimensions were taken outside the plastered wall, as indicated in your testimony?

A. In figuring the floor space occupied by any tenant on exterior walls, we figured from the finished plastered line; on interior partitions to the center of the partition.

Q. Was Exhibit 186 lithographed from the draftsman's drawing that you have spoken of?

The Master: Objection sustained. You need 8571
not answer that. We know all about how these sheets were lithographed.

Mr. O'Brien: I think the witness has stated, your Honor, that they were taken from the Building Department plans.

The Master: The record shows what he said.

Mr. O'Brien: Exception. That is all.

The Master: Call your next witness.

8572 HENRY M. BRUNDAGE, recalled as a witness on behalf of the complainant, testified as follows:

Mr. O'Brien: Of course, I make the same request as previously made and take an exception to your ruling as to recalling the witness with the papers referred to.

The Master: Yes, your exception is noted.

DIRECT-EXAMINATION BY MR. RANSOM:

Q. Mr. Brundage, will you state what general books of account have been kept by the Consolidated Gas Company from January 1, 1906 to 1917, inclusive, and during 1919?

8573 Mr. Chambers: I object to that. Hasn't that already been gone over?

The Master: The year 1918.

Mr. Chambers: I object to it unless counsel states he is going to put in issue and offer proof as to the various expenses and revenues of the years in question, and also as to the value of the property in each succeeding year.

The Master: Objection overruled.

Mr. Chambers: Exception.

Mr. O'Brien: Your Honor is assuming an objection made by Mr. Ransom.

8574 The Master: The objection made by the defendants and the objection is overruled.

Q. We will take, for instance, the year 1919 and then the other years from 1906 down to 1918.

Mr. O'Brien: I call your Honor's attention to the fact that this witness has already stated, and he is now trying to discredit this witness.

The Master: Oh, no.

Mr. O'Brien: He stated the books that were offered in evidence were the same books, the same system of books, and the same system of bookkeeping from the date mentioned.

The Master: That is all right. 8575

Mr. O'Brien: Reference to his testimony will bring that out.

The Master: We will get it right. The reason I allow it, even though it has been previously covered, is that all the testimony heretofore taken has reference to 1918, and I would rather have it clear on the record as to whether there were any changes during the previous years, or since that.

Q. Was the same book kept in 1909 as 1908?

A. Exactly so.

Q. What about 1906, and prior to 1918? 8576

A. The same way.

By the Master:

Q. They are kept in the same way?

A. The same way.

Q. The same system?

A. Same system.

Q. The same reports?

A. The same reports.

Q. The same time sheets, time books?

A. The same time books.

Q. The same pay roll cards and vouchers?

A. The same papers in 1919 as 1918, every paper.

Q. So that every question addressed to you and 8577 answered by you with reference to the 1918 books is applicable to 1919?

A. Yes, sir.

Q. And your answer would be the same?

A. It would.

By Mr. Ransom:

Q. What about the years prior to 1918, was the accounting system different during those years than it was in 1918 and 1919?

A. No, the accounting system, so far as the pro-

8578 cedure and reports and the books kept, have been the same in all of the years to which you refer. If I understood you to say 1906——

The Master: 1906 to 1917, inclusive.

The Witness: Yes, sir.

Mr. O'Brien: Will you kindly let me ask counsel or permit me an objection based upon the assumption I am going to make if he does make a statement on what I want, and that is, whether this witness is now put on anew? Is he going to be permitted to bring witnesses in and be allowed to take them off and put them on at will?

8579 Mr. Ransom: The only reason Mr. Brundage——

The Master: He won't answer that. Mr. Brundage has now been called for the purpose of bringing out directly from him and proving, I assume, from him, the books and records from 1906 to 1917, inclusive, and from 1919 to date, the same matter that they have heretofore proved by him for 1918, and I shall allow it.

Mr. O'Brien: But we have the right to expect when a witness is put on that he is finished, they should not be permitted to bring wit-

8580 nesses in *ad lib.* take them off and put them on again.

The Master: Yes.

Mr. O'Brien: And if he is not properly prepared to cover his whole testimony when he is first put on, or put on the second time——

The Master: Yes.

Mr. O'Brien: We think much time has been lost through the complainant, or the complainant's counsel.

The Master: I don't think it has been lost,

Mr. O'Brien. I think it would be a better prac- 8581
tice and show a better record if the witness would be called for all of the purposes for which he is intended to be used during the trial, but I do not see any legal objection to this procedure.

Mr. O'Brien: But he has done that with Mr. Stark, and I want to record my objection to the procedure as not being regular.

The Master: The record will show your objection.

Mr. Ransom: Let me get the record straight in this respect.

The Master: Then you will have some more 8582
lines and pages used by addresses rather than for the asking of questions.

Mr. O'Brien: He wants to get some of that three per cent stuff in.

Mr. Ransom: The only reason Mr. Stark and Mr. Brundage have been put on the stand to-day is because, as counsel were informed, Mr. Teele's mother died and that called him to Boston, which prevented our going on with him to-day, as we very greatly desired. At the time Mr. Brundage was on the stand before, when counsel for the defendants asked permis- 8583
sion to defer until a later date their cross-examination of Mr. Brundage, I stated that I should be obliged at that time, or at some later time, to call him to the stand in order to offer books of other years, the same as I had offered the books for 1918. The record shows that that was specifically reserved.

Mr. O'Brien: I wanted to have my objection noted, so that counsel would not assume that

8584 he could call off a witness and put him on again without objection on my part.

Mr. Ransom: If there was any way I could have had Mr. Teele here, in accordance with decency, he would have been here, but counsel must recognize those circumstances. Now, may Mr. Brundage proceed as to the years prior to 1918? Were the books the same?

Mr. Chambers: He said yes.

Q. Were the accounting methods the same?

A. They were exactly so.

Q. As to all of the books?

A. Yes.

8585 Q. As of what date did the uniform system of accounts go into effect?

A. As of January 1, 1909.

Q. And after the period from January 1, 1909 to January 1, 1918, the answers which you have given regarding 1918 and 1919, would be true?

A. Yes.

Q. What was the situation prior to January 1, 1909?

A. The same books of account were maintained, as have been subsequently maintained, but due to the establishment of the uniform system of

8586 accounts we were obliged to make quite some changes in the nomenclature of our accounts, and to divide some of them in order to make them conform to the uniform system prescribed by the commission.

Q. The same subsidiary records and vouchers were kept?

A. Prior to January 1st, 1909?

Q. Yes.

A. Yes.

Q. Of all charges?

A. Yes. 8587

Q. And the same accounts were kept except they were given different titles, and some of them were subdivided?

A. Yes.

Q. And the same reports in general which you have described, were made by the various heads of departments, branches of the company's business, or there may have been changes in particular reports?

A. There have been some changes, to comply with the accounting system prescribed by the commission. It also occurs to me one other change 8588
which was made. About four years ago we changed our pay roll system to the system under which we now operate. Prior to that time all the initial steps were the same as now, but the classification of the pay roll was posted direct in the pay roll itself, rather than through the medium of the general office pay roll department, as we now operate it.

Mr. O'Brien: Was that at the time the Hollerith system came into use?

The Witness: Yes, about four years ago.

Q. Was the same system of certification and report by the stations and branches to the general 8589
offices in effect throughout this period, since 1905?

A. Yes, throughout the entire period.

Q. Is this an accurate statement, that formerly there was in the pay roll matter two steps, where now there are three?

Mr. O'Brien: I object to that as leading, your Honor.

Q. Will you describe——

Mr. O'Brien: There may be ten steps, for all we know.

8590 Q. Will you describe the steps which there were prior to this change which you have mentioned?

Mr. O'Brien: And in doing that, will you specify whether you are talking about a commercial office pay roll or works pay roll?

The Witness: I was referring, counsellor, to the pay rolls of all men who were paid on an hourly basis, which, as I have testified before, under our present system, are treated through the general office pay roll department. Prior to this change, somewhere about four years ago, all the underlying data was kept by

8591 the stations and shops and street departments, as at present, but the pay roll itself shows on its face the classification of the amounts to the various accounts, and the postings in our books of account were made from the pay roll rather than from what we now call the labor distribution sheets, in respect to which I have testified.

Q. Posted directly to the ledger from the pay roll?

A. Yes, sir.

Q. There was no pay roll distribution book?

A. No.

Q. Until about the time this Hollerith system

8592 was installed?

A. Yes, sir.

Mr. O'Brien: After that you let the allocating and distribution go to the main office?

Mr. Ransom: I suggest that be deferred to cross-examination.

Q. Did the company have periodical audits of its accounts since 1905?

A. By outsiders?

Q. Yes.

A. Yes, every year since I have been with the company we have had an audit made by an outside firm of public accountants.

Q. That is for each year from 1905 down to 1918, 8593
there was an audit made by an outside firm of certified public accountants?

A. Yes, sir.

Q. Can you state by what firm?

A. They were made for quite some years by the firm of Church & McCulloh, and for the last four or five years by Mr. McCulloh.

Q. And are all of these various books and the subsidiary records and vouchers for these various years now in existence and available at the office of the company?

A. Yes, I believe so.

8594

Q. Do you know whether they were turned over to representative of the defendant, along with the 1918 books?

Mr. O'Brien: I object to that as incompetent, irrelevant and immaterial. Your Honor, I call your attention right here to just what this leads us to. Counsel has frequently done that, it is a collateral matter in a way, and it will be time consuming if each time he makes a reference of that kind we have got to come in with a witness or stop the examination and ask the witness and catechise him about it.

8595

The Master: I think you are right about that, and I sustain the objection. I am not trying out an issue as to whether they did or did not get the book.

Mr. Ransom: Exception.

Q. Do you know whether the representatives of the defendants have been granted an examination and use of the books prior to 1918?

Mr. O'Brien: Same objection.

The Master: Sustained, on the same ground, we are apt to get into a dispute and start to

8596 litigate a collateral question right here. If it becomes necessary to this case, before this case is finally submitted, for the Gas Company to prove the facilities which they have extended to the defendants for the purpose of showing what Mr. O'Brien has characterized as frankness with the Court, I shall take proof of the fact then and try that out then.

Mr. O'Brien: Your Honor will be a witness yourself next Tuesday, and will see what the frank disclosure means.

The Master: Next question.

8597 Q. Has the operating ledger for the various years been kept in the same manner as the operating ledger for 1918?

A. It has.

Q. And does it show the revenues, expenses and construction expenditures and retirements?

Mr. O'Brien: Objected to as incompetent, irrelevant and immaterial, the book speaks for itself, and he is asking the witness now to characterize, and drawing deductions from that book. The title of the book indicates what it may contain.

8598 The Master: I will allow the witness to answer.

Mr. O'Brien: He said it was the same book as the one used subsequently.

The Master: I overrule the objection. I will permit the witness to say whether it contains that information.

Mr. O'Brien: Exception.

The Witness: It does, the operating ledger for each year during all of the years mentioned, contains just the same information as for 1918.

Q. Have you produced here in court the operating ledger for the years 1906 to 1917 both inclusive? 8599

A. I have.

Mr. Ransom: I offer them in evidence.

The Master: Offer one at a time, take 1906 first.

Mr. O'Brien: I am going to say I am amazed at counsel thinking your Honor is going to receive the books on this short examination.

The Master: I am going to receive them. You may not think it, but I am. There is no sense in my permitting a long discussion of the 8600 matter that was so fully discussed when I permitted in the 1918 book. I am going to permit in evidence these operating ledgers for 1906 to 1917 inclusive for just so far and to the same extent that I permitted the books for 1918. All of the books for 1906 to 1917 are not being offered, just the ledgers. When it comes to tabulating figures from them, I may have another ruling to make, I don't know. I will allow these books in as being books kept in the ordinary course of business, on the same theory I let the 1918 operating ledger in. I shall note that you objected to the 1906 and 8601 subsequent years operating ledgers upon all of the grounds advanced by you.

Mr. O'Brien: There are additional grounds.

The Master: Upon all of the grounds advanced by any of the counsel, and I shall note the objection as being made by each counsel for the defendant, upon all of the grounds advanced against the 1918 ledger, and such other grounds as you now want to state. I am going to let them in.

8602 Mr. O'Brien: Will your Honor permit me to examine the witness a few minutes before I reframe my objection?

The Master: No, I think we understand it perfectly.

Mr. O'Brien: Can I not indulge in the same kind of an examination as before when I catechised him?

The Master: No, that is the reason I will not allow it, because I think he will answer in the same way. You are perfectly safe in basing your objection on the theory that the an-

8603 swers to my questions as to how the books were kept and what they are applies just as fully to 1917 books as to 1916 books.

Mr. O'Brien: The objection will not state how little he is acquainted with the particular books unless I examine him.

The Master: He has been with the Company some twenty odd years.

Mr. O'Brien: Somebody has to swear to the contents of these books. Mr. Teele could not swear to it.

The Master: Do you not see, Mr. O'Brien, that you cannot get any better testimony than

8604 you have already gotten?

Mr. O'Brien: I do not know whether you can read into the record the same questions and the same answers, that he made on his former testimony.

The Master: His testimony is there, it covered a period of twenty odd years that he was with the company; how long he was secretary; how long before that he was controller; how long before that he was chief clerk, and so on. Neither his testimony, nor the testimony

of anybody else in that company would do more than to tell the way the books are kept. Neither Mr. Brundage nor any other living man would satisfy me by his statement under oath that those books are correct to his knowledge. He could not do it, and it is only on the theory that the Court has the power to infer that books kept in this way are probably correct that I have been taking them. Now you have all that on the record. 8605

Mr. O'Brien: Why, we are getting into an era where there was a different system, where, for instance, the allocation and distribution of expenses were made by the heads of the stations or works, and submitted in that way. The pay rolls showed the distribution, and we should have here more than formerly—the pay rolls offered in evidence. 8606

The Master: Yes, but my recollection of it is that the time book says, "Spent an hour and a half on account No. 172" and that that was carried along as account No. 172, that under that key number it was put into the proper account. Is not that correct?

The Witness: Absolutely, your Honor.

The Master: I want to protect you fully. 8607

Mr. O'Brien: I am taking the witness' explanation made to-day as between the old and the new system. If I am in error on that I would like to know it.

The Master: I have got in mind the theory upon which you and other counsel for defendants object to these books. It is fully covered. I do not think it is necessary to ask this witness another question, and I cannot do any more than to note on the record that you and

8608 the other counsel object to these books upon all the grounds at any time advanced as appearing on the record for the 1919 books, and I overrule those objections.

Mr. O'Brien: Will you permit me to add to the other objections?

The Master: Yes.

Mr. O'Brien: The additional objections are these—and I say additional, meaning that I fall back on the objections orginally made to the books of account; first, that the witness has not been shown to have a detailed knowledge of

8609 these books through a searching direct-examination. He has only been carried over that ground in a cursory way. Again, that the books are only part of a system, and the books standing alone are useless unless you have both the underlying data and the books of account connected with them, the various cash books, ledgers, and so on, and they have not been offered. So that we have here only part of the story and no indication that they are about to proceed to offer the other books.

The next objection, of course, is that the system, judging from the testimony of the witness,

8610 was different in those years than it is at the present time, and that that has not been properly explained in detail, so that your Honor and the defendants may know the details of the system. It cannot be described in a few general statements of the witness. Of course, the main objection is the one previously made as to the necessity of producing the underlying data.

The Master: The objections are overruled

and the books will be admitted in evidence. 8611
The 1906 operating ledger will, of course, be received.

Mr. O'Brien: Will your Honor permit me to add to the objections that I have already made, the objection that counsel has not declared that he intends to put in issue here the return of the various years since the statute was enacted, although he sets it up in his complaint. There is no positive indication in any act of his, that he intends to put this at issue, and this objection goes rather to the question of fairness to the defendants, and the matter of their prepa- 8612
ration of the case.

The Master: The ruling will stand.

Mr. Ransom: I offer the 1906 operating ledger.

In accordance with the foregoing ruling, the following books were received and marked in evidence:

1906 operating ledger marked Complainant's Exhibit No. 260;

1907 operating ledger marked Complainant's Exhibit No. 261;

1908 operating ledger marked Complainant's Exhibit No. 262; 8613

1909 operating ledger marked Complainant's Exhibit No. 263;

1910 operating ledger marked Complainant's Exhibit No. 264;

1911 operating ledger marked Complainant's Exhibit No. 265;

1912 operating ledger marked Complainant's Exhibit No. 266;

1913 operating ledger marked Complainant's Exhibit No. 267;

8614 1914 operating ledger marked Complainant's Exhibit No. 268;

1915 operating ledger marked Complainant's Exhibit No. 269;

1916 operating ledger marked Complainant's Exhibit No. 270;

1917 operating ledger marked Complainant's Exhibit No. 271.

Adjourned to Friday, September 12, 1919, at 9:15 o'clock A. M.

8615 Last Complainant's Exhibit No. 271.
Last Defendants' Exhibit U.

8616

CONSOLIDATED GAS COMPANY OF NEW YORK vs. NEWTON, Etc., *et al.* 8617

Before ABRAHAM S. GILBERT, Special Master.

NEW YORK, September 12, 1919.

Met pursuant to adjournment.

Present: MR. RANSOM, MR. VILAS, MR. GOETZ, of Counsel for Complainant.
MR. CHAMBERS, of Counsel for defendant Newton.
MR. HAYWARD, MR. CLARK and MR. NEUMANN, of Counsel for Public Service Commission. 8618
MR. O'BRIEN, of Counsel for defendant Swann.

HENRY M. BRUNDAGE resumed the stand.

DIRECT-EXAMINATION CONTINUED BY MR. RANSOM:

Mr. Ransom: Your Honor, the 1919 books have not yet arrived, and pending their arrival I shall take up another matter with Mr. Brun- 8619 dage.

Q. Mr. Brundage, in the course of your duties have you been familiar with the matter of the rental by the Consolidated to the Astoria Light, Heat & Power Company of the use of land, bulkheads, conveying apparatus at the 21st street station, 42nd street station and 111th street station?

A. I have been.

Q. And you have been likewise familiar with the matter of the rental by the Consolidated to the

8620 Central Union Gas Company of the use of certain mains in the Bronx?

A. Yes.

Q. For which a charge of $1,489.44 was made by the Consolidated to the Central Union in 1918?

Mr. O'Brien: I object to the question as incompetent, irrelevant and immaterial.

The Master: He is simply asking if he knows something.

Mr. Chambers: He is now ringing in the rental, and I object to it as incompetent, on the ground——

8621 Mr. O'Brien: That was eliminated on an objection the other day, your Honor.

The Master: Who is talking now?

Mr. Chambers: I will stop until he makes his objection.

Mr. O'Brien: I object further on the ground that the counsel is incorporating in his question as to money that is not in the record; in fact, testimony that was positively excluded by your Honor when Mr. Teele was on the stand.

The Master: Let me hear that question again.

Mr. O'Brien (continuing): On the further ground it is leading.

8622 Mr. Ransom: I will withdraw the question.

Q. Are you familiar with the matter of the rental by the Consolidated to the Central Union on the use of certain mains by the Central Union?

A. I am.

Mr. Ransom: I withdraw the supplemental part of the question which, for the purposes of description, refer to the amount.

Q. And you have been familiar with those matters during the past ten years?

A. Yes.

Q. Did you have anything to do with the determination of the rental which should be charged by the Consolidated for the use of those facilities? 8623

Mr. O'Brien: I object to it as incompetent, irrelevant and immaterial.

The Master: I will let him say if he had anything to do with it, leading up to probably the vital part of the examination.

The Witness: I did. The charge——

The Master: No. Did you have anything to do with it?

The Witness: Yes; I prepared it.

The Master: The next question now. 8624

Q. The case of the property used by the Astoria Company at these stations, do you know what the property is, and what is the general nature of the use for which it is rented?

Mr. O'Brien: I object to it as incompetent, irrelevant and immaterial, in that first the use has not been shown.

The Master: Nothing has been shown as yet?

Mr. O'Brien: But he is reading into the record in these questions a state of facts that does not yet exist.

The Master: It won't do any harm. He asked whether he knows something. Now I will let him ask what it is. 8625

Mr. O'Brien: Counsel can readily correct his question.

The Master: Do you know the use?

The Witness: I do.

Q. And what the property is?

A. Yes.

The Master: Did you ask Mr. Brundage

8626 whether he knew what the property was that was rented to the Central Union?

Mr. Ransom: No, not yet, I have not taken that up.

Mr. O'Brien: He is giving him a lot of leading questions.

The Master: It doesn't do any harm.

Mr. Ransom: I am referring now to the Astoria.

The Master: You jumped from the Central Union?

Mr. Ransom: I asked him first as to his
8627 knowledge of these two things; now I am taking up particularly the Astoria.

Mr. O'Brien: May I submit this fact, that when we undertook to cross-examine a witness about various matters that are reflected and recorded in the books of account that it was asserted here that Mr. Brundage was only the accountant.

The Master: Yes.

Mr. O'Brien: And that he was not put on the stand——

The Master: Now he is being recalled for
8628 direct testimony on certain points, on which you will have the widest latitude of cross-examination.

Mr. O'Brien: I asked him as to the system and as to the use.

The Master: We will come to that in a minute.

Mr. O'Brien: And of course my objection will go to the fundamental effect, which is that this company within its charter has no right——

The Master: Wait until we come to that question. The next question, Mr. Ransom. 8629

Q. Will you state what the property is and the general nature of its use by the Astoria Company?

The Master: Suppose you just tell us first what property of the Consolidated Gas Company is used in any form.

Q. At these stations?

A. At these stations——

The Master: What stations?

The Witness: East 21st Street and West 42nd Street and East 111th Street stations of the Consolidated Gas Company. 8630

The Master: There is property of the company?

The Witness: There is property of the company.

The Master: Used by the Astoria Company?

The Witness: Yes, your Honor.

The Master: All right. Now, what property is it?

The Witness: That property consists of a bulkhead and land adjacent thereto and conveying and discharging apparatus used by the Astoria Company for handling and storing 8631 coke.

The Master: That is the use to which it is put?

The Witness: Yes.

The Master: So that you have already answered that question as part of your answer about what the property is?

The Witness: Yes, sir.

8632 Q. Now, as to the 21st Street station, does the Consolidated Gas Company or the City of New York own the bulkhead?

Mr. Chambers: I object to that as incompetent, irrelevant and immaterial. That is not the way to prove who owned the property?

Mr. Ransom: He stated they were property of the Consolidated. In one instance, in which I am directing attention, the situation is a little different and I want to bring that out from him.

The Master: The trouble with it is that you
8633 are asking this witness a conclusion.

Q. Do you know whether the Consolidated Company pays rent to the City for the bulkhead of the 21st Street station.

Mr. Chambers: I object to that on the ground it is secondary evidence, incompetent, irrelevant and immaterial, and the lease or writing between the parties would be the best evidence.

The Master: Objection overruled. I will let him state whether they pay rent.

Mr. Chambers: Exception.

The Witness: The Consolidated Company
8634 pays rent for the bulkhead at the 21st Street station, owner by the City of New York.

Q. And the Consolidated——

Mr. O'Brien: Will you define that while you are there? What particular block is that?

Mr. Ransom: I am going to come to that.

Q. At the 21st Street station to whom does the conveying apparatus and discharging apparatus belong, if you know?

A. All the conveying and discharging apparatus belongs to the Consolidated Gas Company.

Q. Did you compute the amount to be charged, 8635
and the amounts that were charged by the Consolidated Company for the use of those facilities by the Astoria Company?

A. I did.

Q. What method did you employ in computing this charge?

The Master: Before you go to that, I think you ought to have a more definite description of the property. You said bulkhead and land adjacent and conveying apparatus. That is rather general in its description.

Q. Well, can you state in just what blocks, and 8636
about how many square feet you found comprised the land area used by the Astoria Company for its business at each of the stations?

Mr. O'Brien: Your Honor, I submit the witness has not been qualified as a surveyor.

The Master: I don't think that is the trouble with it, Mr. O'Brien.

Mr. O'Brien: I might say——

The Master: I think the difficulty with trying to prove that fact by this witness is that he probably personally does not know and observe just what they use.

Mr. O'Brien: I want to say to that, your 8637
Honor, that the matter of measuring coal storage space is something that does call for a technical man.

The Master: I don't think so, Mr. O'Brien.

Mr. O'Brien: I have been over that ground.

The Master: Let me say a word about that.

Mr. Ransom: It is not coal storage space.

The Master: Let me say a word.

Mr. O'Brien: Well, coke storage space.

The Master: Here is the way my mind has

8638 run from the beginning of this trial, and many of these things that you gentlemen think are important may be in fact important, but they do not appeal to me as being such.

Mr. O'Brien: Well, they will grow, your Honor, on your mind.

The Master: Now wait a minute. Proposition No. 1 is, before I get through with this trial I am going to try to find out, if I can, what constituent elements go into the manufacture of gas, how long it takes to make it, how much it costs as nearly as is humanly possible to get at it, to make 1,000 cubic feet of gas. I am then
8639 going to try to find out as nearly as I can how much it costs to distribute that gas, and then I am going to try to find out as nearly as I can the capital invested and necessarily and properly used in the manufacture of that gas.

Now, all of this proof that is being offered, counsel for the complainant undoubtedly believing it necessary to their case, does not appeal to me, about operating revenues, rents received from some of these things, 14 inches of land used by somebody else that you gentlemen make a terrific row about, and all that sort
8640 of thing, does not appeal to me at all. If it costs 40 or 50 cents to make gas, and 10 or 12 cents more to distribute that gas, and they charge 80 cents, that leaves probably 20 cents profit per thousand cubic feet. Query, that 20 cents per thousand cubic feet is a return on how much capital? Now, whether you get it $79,000,000, or $73,000,000, is not going to make any difference in this case, because under the Supreme Court decision if there is any fine

line between 5½ per cent and 6 per cent this case has to be thrown out. Now, why waste so much time 8641

Mr. O'Brien: I will tell you why, because this Himalaya of figures——

The Master: I have told you before I never saw the Himalayas. I have been mostly all over the world but I never saw the Himalayas.

Mr. O'Brien: It is made up of small amounts.

The Master: If you got them all you will only get a few million dollars as compared with the sixty or seventy million dollars that is claimed by this gas company. Am I right about my view generally as to the way to get at the result here? 8642

Mr. Chambers: Yes you are.

The Master: Let us get at the big thing.

Mr. O'Brien: The reason why these objections are being made is that they are bordering now upon a crucial question in this case, and that is the extraneous business.

The Master: Suppose the Astoria Gas Company uses 74 square feet more, what difference does it make?

Mr. Ransom: We have to show the rentals we receive from these properties that are otherwise devoted to gas uses. 8643

The Master: That is why I have not stopped you from doing it, because I assumed that you felt that it ought to be done.

Mr. Ransom: It has to be done for two reasons.

The Master: It probably has to be done, but to my mind when I reach a conclusion in this

8644 case it is going to be on a simple analysis of a very simple basis of computation.

Mr. Chambers: That is what we want you to do, but I will show you the difficulty.

Mr. Ransom: If we let this record go through without showing just what revenues we receive, and just what for, aside from the money that is actually collected from the consumers of gas——

The Master: You need not apologize. I am explaining to counsel for defendants why I overrule objections to a line of testimony.

8645 Mr. Chambers: If the Master please, I want to try this case on the question you suggest, but this is a holding company——

Mr. Ransom: Not at all.

Mr. Chambers: They swore before the legislature in 1904 that they were going to abandon all of these plants. Mr. Carter's associate, Mr. Addicks, swore under oath that they were going to abandon all these plants and make all their gas over in Astoria. Why I object to some of these questions in this proof is because I do not believe they will ever be able

8646 to prove how much it cost them to make gas until we appraise the property of all these other companies. That is the whole thing.

The Master: Oh, yes, we will.

Mr. Chambers: How can you?

The Master: We know perfectly well, or will be able to find out how much coal and oil and labor——

Mr. Chambers: But Astoria is where they make their gas.

The Master: I don't care where the gas is 8647
made.

Mr. Chambers: If they will go over to the Astoria plant and try out there how much it costs to make gas over there, that will be very pleasant to me, because that is where most of the gas is made.

The Master: Let me see if I cannot limit the discussions in the record to less than 97 per cent.

Mr. O'Brien: Will your Honor bear with me a minute? The reason I have made the objection, so you may not think we are going to 8648
use up a lot of time on a small matter—the reason I am going into this thing with some particularity, this rental business, it is not the amount of money that is involved here in this particular readjustment on the books as to rental between the affiliated companies and the other, it is the question of their trying to find some excuse for what I say is a wanton retaining of such a vast unused portion of property in the city. That is the reason.

The Master: I don't think, Mr. O'Brien, that you will get anywhere with me very much on
that. This gas company prior to 1884 accu- 8649
mulated a lot of properties that were used in Manhattan to make gas. I don't know what their explanation is going to be, if any, for not having sold and abandoned some of these properties, but I do not think the courts have gone so far as to say that because a gas company has a lot of money invested in land which it has not yet disposed of, that I must disregard the value of that on the theory that they never could use it for the purpose of making gas.

8650 Mr. Ransom: Most of the land we are not using in the gas business has been excluded on Exhibit 178.

Mr. O'Brien: Your Honor, I feel confident, will change his mind on that subject before we are through with this case.

The Master: I am going to allow this witness to testify that the Consolidated Gas Company has charged the Astoria Company, and the Astoria Company has paid certain sums for use of facilities. I will not permit the witness to go into greater detail as to the fact that
8651 they used so much land or so much of the facilities, because I do not think he is the man to prove it.

Mr. Ransom: Let us see whether he is or not.

Mr. O'Brien: My objection a minute ago went to his qualifications.

The Master: Yes, I will rule for the time being as to this question and see what another question will bring forth.

Q. Did you from time to time go to these stations to observe the conditions there as to the handling of coke by the Astoria Company at those three stations?

8652 A. I cannot say from time to time, Mr. Ransom. At the time this arrangment was made I did go to the stations and under my direction the land occupied by the Astoria in handling coke was measured.

Q. Were you present?

A. Yes, while I was present.

Q. On the basis of the measurements and computations made by you or under your direction, you determined the number of square feet in each

of these stations, on the basis of which the Consolidated was to bill the Astoria? 8653

A. I did, sir.

Q. Will you state what the number of square feet was at each of the stations?

Mr. O'Brien: That I object to.

The Master: No, I will not let him say that. I will let him say how much he billed.

Q. Can you state the number of square feet that you billed?

The Master: Yes, I will let him state the number of square feet that he billed as distinguished from the statement of fact that he used so many square feet. 8654

Mr. Ransom: We may have to call another witness on that.

Mr. O'Brien: Same objection, your Honor, and based particularly on the proposition that they have not shown the use by the Company, in the first place, that they have not shown the authority within the charter for doing business through affiliated companies. I mean selling gas-making facilities.

The Master: The objection is noted and overruled.

Mr. O'Brien: The fact that the witness has not qualified as an engineer, and the computation on which he based his adjustment of the figures is not in the record. 8655

The Master: Objection overruled and exception allowed. You can state the number of feet that were billed.

Mr. Ransom: And identify the blocks in which the land so used was located, then the number of feet which was taken as the basis of the charge to the Astoria Company.

8656 Mr. O'Brien: May I add further the objection, your Honor, that there has been no date fixed for this. It may have been ten years ago, or five, for aught we know.

Mr. Ransom: We will find out in a moment.

The Master: When was this arrangement made, Mr. Brundage?

The Witness: On or about January 1, 1909, your Honor, about ten years or more ago.

The Master: And that same basis of charge has continued ever since?

The Witness: Yes, sir; $26,000 per annum we charge the Astoria for the use of these
8657 properties, and have been doing it for ten years.

The Master: That is based upon how many square feet?

Q. Will you give the 21st Street station?

A. At the 21st Street station there is——

Q. What block, and between what streets?

A. Block 987, between 20th and 21st Streets east of Avenue B, 1,900 square feet; block 979, northwest corner of 21st Street and Marginal Street, 3,500 square feet, making a total of 8,100 square feet at that station. At 42nd Street,
8658 blocks 1089 and 1107, on the south side of 42nd Street near the bulkhead, 10,710 square feet, and at 111th Street——

Mr. O'Brien: I am going to emphasize my objection here.

The Master: Wait until he finishes the answer, then you can move to strike it out.

A. (Continued.) Block 1704, between 110th and 111th Streets, west of Pleasant Avenue, 17,345 square feet; and block 1712, being the bulkhead between 110th and 11th Streets, west of Pleasant

Avenue, a computation of three-fourths of the bulk- 8659
head.

The Master: Do you move to strike out now, Mr. O'Brien?

Mr. O'Brien: I move to strike out, on the ground that there is no proof in this case that the space in question is occupied or used for the storage of coke. On the contrary the evidence shows no coke at 42nd Street, but a plant not in use—piles of coal figure in the testimony. The evidence as to 21st Street shows the storage of some coke mixed with coal on only one block at the 21st Street station. The 8660
use, however, for a stable by the National Coal & Coke Company is made. The evidence as to 111th Street would show that while some coke is stored there, a great deal of coke is delivered directly from the barges in the river to the works.

The Master: I am simply taking it as showing the charges made by the Consolidated Gas Company to the Astoria Company and the basis on which the charges were made.

Mr. Ransom: It shows the space rented or the space which the Astoria Company has the 8661
right to use, and which they may use from time to time.

The Master: I do not know whether it goes as far as that. It shows the charges made; that is all it shows.

Mr. OBrien: Is this a lease, Mr. Ransom? Is this under a former lease?

Mr. Ransom: Not under a former lease, no.

Q. Will you proceed to state the basis on which you computed and made up this charge which the Consolidated has been making to the Astoria for

8662 the use of land, bulkheads, and the charging for conveying apparatus at the stations?

The Master: I do not quite get your question. I thought he had told us that.

Mr. OBrien: It might save a good deal of cross-examination if there is some particularity shown. We are speaking about a good deal of apparatus in these stations where they cover blocks.

The Master: Do not worry about your cross-examination. You may make notes and bring out anything you want.

8663 Mr. O'Brien: There was an innuendo and an atmosphere yesterday that did not please me at all, your Honor. There was an innuendo round about this cross-examination that we were crooks.

The Master: You heard me express myself some days ago in answer to Mr. Ransom's criticisms, that your questions were exhaustive, and there was surprise manifested at that.

Mr. Chambers: I am going to add to my objection the further objection that this is incompetent and is trying out a collateral matter. This property should be eliminated from the

8664 case entirely if it is not used by the Consolidated Company.

The Master: There is only one statement made by Mr. Ransom in his statement to Judge Mayer that really had any basis in fact, and he has been as guilty of it as other counsel, except to a lesser degree, because I have been able to restrain him a little.

Mr. Chambers: On my part I am going to try to avoid it. It is very hard work to get

an objection in with Mr. Ransom's method of 8665
procedure.

The Master: It will not be hard at all if you state your objections without elaborating, unless the Master thinks it is necessary.

By the Master:

Q. How did you arrive at a figure of $26,000 for a space that you say you charged?

A. I ascertain the area of square feet of the land occupied.

Q. You mean you took those figures you have been telling us about?

A. That were measured in my presence and got 8666
a certain number of square feet. The valuation of that land I determined from the valuations shown in the prior 80-cent gas case by Wheelock, from which I determined the value per square foot, and using that value per square foot, by the land shown to have been occupied by the Astoria Company I determined the value of the land on which the charge was to be based.

The Master: Strike out the words "shown to be occupied by the Astoria Company", and I will say: "Assumed to be occupied by the Astoria Company". 8667

Mr. Ransom: And on that basis built up by the Astoria Company?

The Master: No, let the witness finish. You said you took three-fourths of the bulkhead?

The Witness: Yes.

Q. Was that three-fourths of the figure placed by Wheelock on the value of the bulkhead, or was that three-fourths of the rent you paid the City?

A. That was.

8668 By Mr. Ransom:

Q. At 21st Street, what was done there in the case of the rented bulkhead; what charge was made to the Astoria Company with respect to the bulkhead which the company rented from the City?

Mr. O'Brien: The same objections, your Honor.

The Master: Same ruling and exception.

A. The Consolidated Gas Company pays rent to the City for the bulkhead at the East 21st Street, and that rental was apportioned between the Consolidated Gas Company and the Astoria, based upon
8669 the tonnage that passed over it.

Q. And with respect to the bulkhead at 42nd Street what was the basis of the charge for its use by the Astoria Company?

A. At 42nd Street the basis was the cost per load handled over the 21st Street bulkhead.

The Master: What do you mean by cost per load handled.

The Witness: The bulkhead at East 21st Street, as I testified, belonged to the City and we determined the cost per load of handling coke over the 21st Street bulkhead, over a bulk-
8670 head belonging to the City, your Honor, and used that same basis for the tonnage passed over the 42nd Street bulkhead.

The Master: How did you determine that?

Mr. Chambers: I just want to move to strike out where he says the bulkheads were owned by the City. He slipped that in.

The Master: I will take his conclusion on that. You mean when you say the bulkhead owned by the City, that is the bulkhead for which you pay rent to the City?

The Witness: Yes, sir. 8671

The Master: Whenever you say that we assume that you mean the property you pay rent to the City for. We will have that understood. How did you determine the cost of handling coke over the bulkhead?

The Witness: By dividing the money paid to the City by the number of loads of coke handled over it, thereby getting a cost per load, and that same factor was used in determining the amount to be charged the Astoria Company for the use of the 42nd Street bulkhead.

Mr. O'Brien: I would like to know the 8672 theory of this thing, your Honor.

The Master: You can find it out on cross-examination.

Q. On what did you determine or base the charge for the use of this apparatus? On what was the East 111th street pier and bulkhead use based? What part of that was calculated as used by the Astoria Company?

The Master: While the witness is looking that up, do you expect, Mr. Ransom, to prove anywhere in this case, just what it costs to make gas, based upon the amount of material 8673 and labor that goes into it?

Mr. Ransom: Surely; exactly.

The Master: Have I the power to direct you in line with the equity rule that I control the order of proof that I do it now? I am asking you a frank question; have I that power?

Mr. Ransom: Purely as to your power?

The Master: Yes. The next question I am going to ask you is why I should not do it.

Mr. Chambers: Yes, why should we not get down to the real question.

8674 The Master: The first thing I want to know is a frank statement as to whether I have the power.

Mr. Ransom: What we think we are doing——

The Master: No, have I the power to direct you to start your proof as to how much oil and fuel and labor and other material it takes to make gas?

Mr. Ransom: I am frank to say on that that I believed and believed throughout this trial, and believe now, that under that equity rule
8675 you have a broad and virtually unlimited power as to the order of proof, as to the mode in which facts requiring evidence before you shall be proved.

The Master: Then you think I have the power to direct you now as counsel for complainant to first prove or offer proof as to the exact cost of making gas, having in view in that respect the materials and labor necessary to make it?

Mr. Ransom: I do not know that you would have power to require us to disregard the provisions of the accounts which have been kept
8676 in pursuance of provisions of law and launch on to some mode of proof which is wholly detached from the system of proof set up by the regulatory statute of the state. I think as to the mode of proof, whether we shall put on engineers before we put on or prove operating figures under the uniform system of accounts —I think that is within your Honor's control.

What we have endeavored to do, we have shown in these tabulations of our accounts kept under the provisions of law, in the first

place our revenues, in the second place our 8677
expenses and on the matter of our expenses we have shown first, the cost of production, and in the second place, the cost of distribution. We have given in detail just what our items are. Now we will follow that, it seems to me by the next natural step, by the witness who will follow Mr. Teele on the stand, and show in the sort of detail which I think your Honor would want just what the particular operations are, just what are the ingredients which go in, their cost, the reasonableness of their cost, and what may be called the justification 8678
of the charges, the expenditures which we have made.

There are two questions. In the first place what has it cost this company to make gas and, in the second place, under the attitude taken by the defendants, should it have cost this company this to make gas? We have made up here, of course, these accounts which show in a fully itemized way just what it cost to produce gas at each of the stations in Manhattan, just what the quantity of gas produced is, so that you can ascertain exactly what it costs to 8679
produce it. We have shown just what it cost to distribute and just how much is distributed.

The Master: Let me interrupt you. I am going to let you complete the testimony of this witness. I am going to let you finish with Mr. Teele and when you are through with Mr. Teele I shall direct you, as I think I have the power, to bring in your experts to show just what it takes to make gas and how much it costs.

Mr. Ransom: I may anticipate your Honor

8680 in that respect, because owing to Mr. Teele's absence at his mother's funeral today, I shall call as the next witness the man with whom we will start that proof. So that we will probably start it today.

The Master: Let us go ahead. There was an unanswerable question.

The Witness: Yes. I ascertained that three-quarters of that bulkhead at 111th Street was used by the Astoria Company, and based the charge upon the valuation as determined by Wheelock in the 80 cent gas case.

8681 Q. On what did you base the charge for the use of the apparatus at these stations?

Mr. O'Brien: I move to strike out the question and answer on the ground that now we are drafting into this record through a witness not a real estate expert, the value of that land.

The Master: I take it on the line already stated, showing how he computed it, that is all. Mr. Wheelock's figures are not binding.

Mr. O'Brien: You are not passing on its real admissibility?

The Master: Its real weight.

Mr. Ransom: It is not controlling upon your

8682 Honor.

The Master: The mere fact that Mr. Brundage took Wheelock's figure as the basis of calculation, is not at all binding on me. I am not bound by Wheelock's figures, and won't be.

Mr. Ransom: You have figures in this case of your own.

Q. On what did you base the charge for the use of the apparatus of the company at the three stations?

A. Upon the Consolidated Gas Company's actual 8683
investment in this apparatus.

The Master: What do you mean by actual investment?

The Witness: The actual investment the Consolidated Company has made in this apparatus.

The Master: Do you mean what they paid for it?

The Witness: What they paid for it.

Q. As shown by what?

A. As shown by the books of account, on which I computed 15 per cent.

The Master: Why 15 per cent? 8684

The Witness: 15 per cent, to cover those factors that I knew should be covered in a computation of that kind.

The Master: What are the factors?

Mr. O'Brien: Now you are going into the mechanics, your Honor.

The Master: I want to see on what basis he made the charge, that is all I care about.

Q. What were the figures which you took into account in computing the 15 per cent?

The Master: I don't see how by any possibility all these items that you may spend a lot of time on, involving a few million dollars, com- 8685
paratively speaking, when you talk of sixty or seventy millions in computing a rate, means anything.

Mr. Ransom: It involves $26,000. of the revenue of the company.

The Master: I am not talking about that.

Mr. Ransom: And we have got to show correspondingly how much we would exclude on account of this use by the Astoria of the property.

8686 The Master: I don't think you do it that way. That is the trouble with it. If you think by showing what you charge the Astoria you are proving up the part of your property that is used by the Astoria, I think you are in error.

Mr. Ransom: No, we are not. That is not conclusive in itself, but it is a necessary step to the proof.

Q. What were the elements which you took, or the factors which you took into account as covered by the 15 per cent?

8687 A. Return on the investment.

Mr. Chambers: He didn't answer your Honor's question.

The Master: No, how you got the 15 per cent.

The Witness: I said the various factors that I knew should be considered.

The Master: What were those factors?

The Witness: Return on the investment, current repairs, renewals, replacements, taxes.

The Master: What percentage of the use did you——

Mr. O'Brien: I move to strike out the wit-
8688 ness' answer on the ground that he is not qualified in any way as an expert engineer.

The Master: I won't strike out the answer. It simply bears upon the weight to be given to his testimony.

Q. Was insurance included, fire and liability?

A. Fire and liability insurance, yes.

Q. Supervision?

A. Yes.

Q. Now, as to the 111th Street, what percentage of the use of the apparatus was attributed to the handling of Astoria coke?

A. At 111th Street?

Q. Yes. 8689

Mr. O'Brien: The same objection. Your Honor will direct the stenographer to note my objection to all of these questions.

The Master: Yes. Objection overruled.

The Witness: All the apparatus was used.

Q. Now, as to the East 21st Street and West 42nd Street——

The Master: In other words what you figured at 111th Street was that all of this apparatus was used by the Astoria Company, and you were charging them a rent based on 15 per cent of what it cost you? 8690

The Witness: Yes, your Honor.

Q. In the case of East 21st Street and West 42nd Street, how did you ascertain the proportion of Astoria use of this conveying and discharging apparatus?

A. It was based upon the tonnage handled by the apparatus.

Q. By what?

A. For the Consolidated and for the Astoria.

Q. That is, the relative portion of Astoria coke to the coke and material handled by the apparatus?

A. Yes, sir.

Q. How did you compute the value of the use 8691 of the land occupied by the Astoria at the stations on the East 111th Street bulkhead, what charge against that value did you make? That is, what rate of charge, what percentage, in the case of land?

A. For land I charged 5 per cent.

Q. Upon the value ascertained as you have stated?

A. Yes, sir.

Q. And in the case of the East 21st Street, a part of the rental paid to the city was charged?

A. Yes, a part of the rental paid to the city for the use of that bulkhead was charged.

8692 Q. Did the charge against the Astoria include the real estate taxes on the land occupied and on the 111th Street bulkhead?

A. It did cover it in every case.

Q. To the aggregate amount thus calculated, did you add any percentage?

A. Yes, to the aggregate I added 10 per cent.

Q. To the what?

A. To the aggregate of all these charges to which you have referred, namely, the charge for the land, taxes, bulkhead and discharging apparatus, to that aggregate I added 10 per cent.

8693 Q. You added 10 per cent to cover what?

A. I should say additional return on the investment.

Q. Can you state in detail the amounts which enter into the calculation of the total rental charged as computed by you prior to the fixing of the rentals?

A. I can.

Q. Have you summarized that in any schedule of which you have a copy here with you?

A. Yes. Shall I answer your question in detail?

Q. Have you summarized it in any schedule?

A. I have.

8694 Q. And is this such a schedule?

A. It is.

Q. Which shows in detail the method as to the land and apparatus at each station?

A. It does.

Q. Will you give it?

Mr. Chambers: Before he gives it, I object to it as incompetent, irrelevant and immaterial, that is made up, much of it, of secondary and hearsay evidence. The Astoria Company is really the Consolidated Company itself, and any dealings between them are open to question, because the Astoria Company is not ask-

ing for an increase in rate while the Con- 8695
solidated Company is, and naturally they saddle everything on the Consolidated Company, and it has no bearing on the issues between the parties, because all of the property testified to by the witness should either be entirely excluded from the case, or the court should find out what it cost the Astoria Company to make gas, because it is really the Consolidated Gas Company.

The Master: Objection overruled, and an exception. No discussion is necessary.

Mr. O'Brien: I object to it on the grounds 8696
that I have already enumerated. I sum them up at this time, because the witness' testimony has now taken on the form of a schedule. I object first that there has been no contract proven; that there has been no testimony upon the part of the witness that the company in question, the Astoria Company, entered into this agreement. Further, on the ground that we have not had produced the men who made the measurements and the calculations, surveyed the property in question, which calculations and survey are the basis presumably of
the charges said to have been made. Thirdly, on 8697
the ground that the witness has testified that his observations and inspection of the property prior to the adjustment of these rentals and the adjustments themselves, were made in 1911, and have obtained at the same figure ever since. The testimony indicates that there have been changing conditions since that time, and that these so-called rentals are no justification for the use of large sections of vacant properties within the built-up portion of New York City; and on the further ground that there has been no attempt made as yet on the part of the

complainant to meet the requirements of this case in bringing in proofs as to the value of the Astoria Company's property and the cost of making gas, all of which are essential parts of this case.

The Master: Objection overruled. Motion denied.

Mr. O'Brien: Exception.

Q. Can you state the computation in detail of the different parcels?

A. I can.

East 21st Street Station:			
Value of Real Estate	$36,600.00		
Rental—5% of $36,600.00			$1,830.00
Taxes			470.00
Rent of bulkhead			1,602.00
Use of Discharging Apparatus			1,500.00
			$5,402.00
		Add 10%	540.20
		Total	$5,942.20
		(Say)	$5,950.00
West 42nd Street Station:			
Value of Real Estate	$54,000.00		
Rental—5% of $54,000.00			$2,700.00
Taxes			865.00
Use of Discharging Apparatus			2,915.00
Dock charges			1,440.00
			$7,920.00
		Add 10%	792.00
		Total	$8,712.00
		(Say)	$8,700.00
East 111th Street Station:			
Value of Real Estate (including bulkhead)	$121,750.00		
Rental—5% of $121,750.00			$6,087.50
Taxes			1,611.00
Use of Discharging Apparatus			2,603.00
			$10,301.50
		Add 10%	1,030.15
		Total	$11,331.65
		(Say)	$11,350.00

Mr. O'Brien: I object and move to strike 8701
out the witness' testimony on the ground that it is indefinite, there are no particulars given as to years, there is no description given as to the apparatus said to be used, the discharging apparatus, its character, its age, the date of purchase, the persons from whom purchased, and so on, are not set forth, and there is an attempt made here to produce testimony as to the value of real estate without calling in experts whose valuations are given so that we may cross-examine and see what weight is to be given their testimony. Further, that there 8702
are certain percentages here which are given, for instance, the additional ten per cent. added is not justified by anything in the evidence, and the whole thing is entirely hearsay. My objection goes particularly at this time, your Honor, to the lack of detail as to these figures?

The Master: Objection overruled.

Mr. O'Brien: Exception. May I add if it is being accepted on the promise to connect it?

The Master: I don't care very much whether they connect it or not. I am receiving it only on the theory that this accounting department makes certain charges, and this is the way they 8703
arrived at that. That doesn't prove a thing as to the justification of the charges, and if it is not connected I will simply disregard it.

Mr. Chambers: It seems to me he states here the value of the real estate as if he knew the value.

Mr. Ransom: This is put in only as the basis which he took for the making of the computation.

8704 The Master: I stated before that he could not prove values that way.

Mr. Ransom: Why, no.

Q. Was the rental value fixed at the total amount which you computed and recommended?

A. Yes, sir; $26,000 per annum.

Q. And is the arrangement still in effect on the same terms as it was in 1918?

A. It is.

Q. And has been during the intervening years?

A. Yes, sir.

Q. Now, will you briefly describe the mains in
8705 the Borough of the Bronx for which the rental charge is made by the Consolidated Gas Company to the Central Union Gas Company?

A. The charge for mains in the Borough of the Bronx——

Q. Will you first tell what mains there are?

A. There are 14,157 feet of 8 inch, 20 inch and 24 inch mains in the Bronx.

Mr. O'Brien: I am going to say here something more than I have said.

The Master: I wish you would say it.

Mr. O'Brien: I want to impress on your mind here the *modus operandi* of counsel. He
8706 may have the best motive in the world, the most justifiable motive in the law——

The Master: What is the objection?

Mr. O'Brien: The objection is that he is proceeding now to prove properties——

The Master: No.

Mr. Ransom: No.

The Master: It proves nothing except that there is a certain number of feet of certain sizes of mains in the Bronx for which charges are made. I am not going to let the witness

go further unless he tells us how many feet of 8707
each sized main there are and where they are. I am going to permit this proof as I permitted the other proof in the case of the Astoria, to show that they make charges. It doesn't prove a thing.

Mr. O'Brien: We will have so many things hanging loose that we are going from confusion to chaos.

The Master: No. My mind is set on certain essential points in this case, that I am going to decide this case on, and I am not going to make five hundred findings either.

8708

Q. Mr. Brundage, can you tell just what streets these mains are located in, between approximately what points they extend and the approximate number of feet of each dimension?

A. I can.

The Master: For what year are these charges made that you are talking about now?

Q. When were these first made?

A. The charges for the use of these mains go back to somewhere about 1900 or 1902.

By the Master:

Q. Has the same charge obtained ever since?

A. Yes.

8709

Q. The same for 1918?

A. The same charges made, yes.

Q. The same for 1919?

A. Yes, sir, one-twelfth of this annual charge is made per month.

Q. The same fixed charge?

A. The same fixed charge.

By Mr. Ransom:

Q. And is paid?

3710 A. Yes, sir, is paid by the Central Union Gas Company.

Mr. O'Brien: I am objecting to all this.

The Master: Yes, this is taken subject to all objections by all counsel for defendants.

Q. Will you take the different mains which are the subject of this charge?

A. On 138th street from the Madison Avenue bridge to the east side of Third Avenue, 1,773 feet of 24 inch mains.

Mr. O'Brien: As I understand it, this is not taken as proof of the existence of these mains

3711 The Master: I have recently said, Mr. O'Brien, that it is taken only as proof of the fact that they make certain charges.

Mr. Ransom: This identifies the charges.

The Master: It does not prove the mains; it does not prove the size; it does not prove the thickness; it does not prove the use; it does not prove a thing. That is why I have said before that counsel undoubtedly believes it is part of his case, and I am taking it for that reason, but for the life of me I don't see how it is going to help him, or help me to fix how much it costs to make gas and what the invested capital is.

3712

138th St.	Madison Ave. Bridge	E.S. Third Avenue	24"	1,773 ft.
138th St.	W.S. 3rd Avenue	E. of Alexander Ave. under "L"	20"	1,020 ft.
Brook Ave.	W.S. N.S. 134th St.	S.S. 138th Street and N.S. of 138th St.	8"	5,798 ft.
St. Anns Ave.	W.S. N.S. 138th St.	S.S. 156th Street (1157')	8"	4,856 ft.
156th St.	S.S. W.S. of Brook Ave.	W.S. St. Anns Ave.	8"	438 ft.
Westchester Ave.	St. Anns Avenue	W. of German Place (272')	8"	272 ft.

Total, 14,157 feet.

Q. Upon whose recommendation, if you know, was this rental fixed? 8713

The Master: What rental?

Mr. Ransom: The rental charged by the Consolidated Gas Company to the Central Union Gas Company.

The Master: He didn't say how much it was.

Q. Upon whose recommendation was the rental fixed?

A. Upon the recommendation of Mr. Colin C. Simpson, General Superintendent of mains and services of the Consolidated Gas Company.

Q. Is that Mr. Simpson, junior or senior? 8714

A. Senior.

Q. Is he living or dead?

A. He died some years ago.

Q. Do you know the basis of the rental charge?

A. I do, the company's investment in the mains at 10½%.

By the Master:

Q. You mean what it cost them to lay the mains?

A. Yes.

Q. The labor and material?

A. Labor and material. The actual cost of laying the mains. 8715

Q. And you charge 10½% on that?

A. Yes, sir.

By Mr. Ransom:

Q. The book outlay on account of the mains?

A. Yes, sir.

Mr. O'Brien: We are getting down to another objectionable basis here in these questions.

The Master: It is all on the same line.

Mr. O'Brien: The trouble with the testi-

8716 mony, when it is picked out afterwards and excerpts used in the briefs——

The Master: There won't be a bit of trouble. When this case is finished——

Mr. O'Brien: I have just been going over a brief yesterday.

The Master: You are not going over any such brief in this case, and you are not going to have six months to submit a brief, and then be told at the last minute to submit findings. We are going to talk this all over as to what the proof shews, and we are going to decide
8717 this case. Bear in mind that the case is being tried by this Master.

Mr. O'Brien: If the testimony has this weight, why not ask the witness the sweeping question, "How much do you get for rentals?"

The Master: They show that in the books. I am not going to stop counsel for complainant from putting in the proof that he deems necessary to his case.

Mr. O'Brien: The fact that he goes into it with this particularity shows, to my mind, that he has some other purpose in his mind than to
8718 show that they get so much money.

The Master: You and I will keep it in our minds as it develops.

Q. What was the basis of this 10½ per cent charge, or what are the elements it was designed to cover?

A. It was designed to cover a return on the investment——

The Master: It would cover all of the things, the depreciation of the pipe, the repair of the pipe, the taxes that you pay on it, and all the rest of it?

A. I would not say that, I would say a return on 8719
the investment, the taxes and the renewals and replacements and insurance.

Q. This basis as recommended by Mr. Simpson was accepted by the company?

A. By both companies.

Q. And that basis has since been in force?

A. It has.

Q. Mr. Brundage, in your testimony regarding the 21st, 42nd and 111th Street stations, the facilities used by the Astoria, are you able to state what was the total value assigned to the real estate and to the apparatus at those plants? Are you familiar 8720
with this memorandum which I hand you, or have you records there from which you may do it?

A. The value of the real estate at the 21st Street station——

Q. What is the total, do you know?

A. For all stations?

Q. Yes.

A. No, I haven't it made up in that shape.

Q. Are you familiar with this tabulation?

A. Never saw it.

Mr. Ransom: I will withdraw the question at this time. 8721

Q. Mr. Brundage, have you now produced here in court the books of the company as kept thus far during 1919?

A. I have.

Q. Kept in the same manner as during 1918?

A. Exactly so in every particular.

Q. You have produced here the same books for 1919 that you had for 1918, that is, the same kind of books?

A. Yes, sir.

8722 Q. Does the sundry debtor's ledger, Exhibit 191 in evidence in connection with the 1918 books cover also 1919?

A. It does; 1919 is in the same ledger.

Mr. Ransom: I offer in evidence these 1919 books.

The Master: Suppose you bring them up one at a time.

Mr. Chambers: We make the same objection as made heretofore.

Mr. O'Brien: I make the further objection, your Honor——

8723 The Master: Just wait a minute until I get the offer.

Mr. Ransom: I offer in evidence Operating Ledger A for 1919.

The Master: Counsel for the defendants present the same objections to that book as they have to all of the books for 1918, upon all of the grounds stated. The objection is overruled and exception. Operating Ledger A for 1919 will be marked in evidence.

Mr. O'Brien: I want to make the additional objection that a fragment of a year cannot be accepted in a rate case. I assume that the

8724 books, from what the witness has already said, are kept on an annual basis, and the showing of a part of a year is only misleading.

The Master: They are not drawing off a balance to show profit and loss, they are showing receipts and revenues, and you can take any one day or month, or six months or seven months, and that would show the receipts and revenues. They cannot balance the books to show the profit and loss. You would be right

if they attempted to show a profit or loss over 8725
the year.

Mr. O'Brien: They will be entirely misleading as we go along if only a portion of a year is shown, because we might have everything going out and little coming in.

The Master: That is so, but I am not going to decide this case on seven months for 1919.

Mr. Ransom: You would hardly want to decide it without some 1919 figures.

Mr. Chambers: Counsel stated a few minutes ago that he had proven the cost of production and the cost of distribution. 8726

Mr. Ransom: I did not say that.

The Master: What is the use of worrying about what counsel says in this case? I am not going to decide the case on that.

Mr. Hayward: May I ask a question here?

The Master: Yes.

Mr. Hayward: Are these going to be serial exhibits, are they going to be continuous story exhibits? These are 1919 books. Are they going to keep making entries in exhibits?

The Master: We have in evidence their books of account for 1918 and 1919, and we also have in evidence certain books, the 8727
operating ledgers, for the years 1906 to 1917 inclusive.

Mr. Hayward: These books that are going in now are still in active use for this year. Where are we going to draw the line?

The Master: I should say that you draw the line as of this date.

Mr. Hayward: Nothing subsequent to that?

The Master: No.

8728 Mr. Ransom: The offer at this time is only of entries up to this time.

Mr. O'Brien: I would like to find out if they are being offered here with the promise that they are going to bring in the supplemental books, the other books of account.

The Master: You mean the original vouchers and receipts? They are bringing in for 1919 the books that they brought in for 1918.

Mr. O'Brien: But you are not just going to bring in the poor little operating ledger, as you did for the ten years?

8729 Mr. Ransom: I admit that it is the company not the ledger that is poor.

The Master: Just mark this Operating Ledger and get that out of the way.

Operating Ledger received in evidence and marked Complainant's Exhibit 272.

Operating Ledger B received in evidence and marked Complainant's Exhibit 273.

Operating Journal received in evidence and marked Complainant's Exhibit 274.

Treasurer's Cash Book No. 34 received in evidence and marked Complainant's Exhibit

8730 275.

Invoices approved, No. 29, received in evidence and marked Complainant's Exhibit 276.

Sundry Creditors' Ledger, No. 18, received in evidence and marked Complainant's Exhibit 277.

Index accompanying same received in evidence and marked Complainant's Exhibit 278.

Payroll Summaries received in evidence 8731
and marked Complainant's Exhibit 279.

Sundry Debtors' Blotter, No. 50, received in evidence and marked Complainant's Exhibit 280.

The Master: Now, Mr. Chambers, any questions of this witness?

Mr. Chambers: Oh, yes, a lot of them.

The Master: If I may make a suggestion, I would reserve any cross-examination of this witness now and place the burden on the complainant to continue. I do not think the testimony is of the character that cannot be proven 8732
by some other witness if anything happens to Mr. Brundage, and I do not think it is important enough to go on with the cross-examination now. I will grant an application to adjourn cross-examination until some future occasion, if you desire.

Mr. Ransom: Do you mean on this subject or on other subjects? This witness has never been generally cross-examined, and that was deferred until he was produced again.

The Master: If counsel wants still to defer it I will defer it. 8733

Mr. Ransom: I would much prefer to have them go ahead today, if your Honor were willing, because that would avoid still further interrupting the order of proof by calling another witness out of turn.

The Master: No, I think I will suspend it. There isn't anything that this witness testified to that is of very great importance here or that cross-examination is going to help very much, in my judgment, and that is why I think

8734 it might be well to suspend this cross-examination to see if later on——

Mr. O'Brien: But your Honor, through this witness all these books came in evidence.

The Master: I know that.

Mr. O'Brien: And we have to have some one that swears—I am sure defendants' counsel are going to find out how much Mr. Brundage knows about the books.

Mr. Ransom: If they want to cross-examine on these books, I would like to have them do it.

The Master: If you start your cross-exam-
8735 ination, I will ask you to finish it.

Mr. O'Brien: Well, we will finish it with rapidity.

The Master: I don't mean finish it today.

Mr. O'Brien: Of course, here is a witness, as I have said before, Mr. Teele does not know anything about the figures that are handed him except to go over them as an expert accountant would.. We want somebody to swear that this money was spent.

The Master: I only made a suggestion. You gentlemen do just as you please.

8736 Mr. Chambers: I am afraid I will forget about it.

The Master: All right, go ahead. I am not going to direct you to suspend. I said I would consider an applicatioa to suspend, but if you start in, I would like you to finish.

Mr. Chambers: You are going to close at 1:15?

The Master: About one o'clock.

CROSS-EXAMINATION BY MR. CHAMBERS:

Q. To bring your mind to the mains in the Borough of the Bronx, the Consolidated Gas Com-

pany sells no gas in the Borough of the Bronx, do 8737
they, where those mains are?

A. No.

Q. And you say that this arrangement with the Union Gas Company goes as far back as 1900 and 1902?

A. I did so say, counselor.

Q. Which is it? There is a difference of two years?

A. I should say that that arrangement was effective about 1900.

Q. The Consolidated Gas Company, I take it, have no use for these mains, else they would not 8738
rent them out as they do?

A. These mains are used exclusively by the Central Union Gas Company, sir.

Q. I take it, the Consolidated Gas Company has no use for them, or they would use them?

A. That may be assumed.

Q. You farm them out to this other company, that is so, isn't it?

A. We do rent them to the Central Union Gas Company.

Q. The Union Gas Company?

A. The Central Union Gas Company.

Q. That is a company that most of the stock is 8739
owned and controlled by the Consolidated?

A. No, the Consolidated does not own any of its stock.

Q. None of the stock of the Central Union?

A. No, sir.

Q. Never have?

A. No.

Mr. O'Brien: Well, you know how they are connected with it, don't you, Mr. Brundage?

8740 Mr. Ransom: I object to that as incompetent.

Q. What is the corporate relation between them?

The Master: Objection sustained.

Mr. Chambers: You did not object to them.

Mr. Ransom: I did.

Q. The New Amsterdam Company owns some of the stock of the Central Union?

A. I believe they do.

Q. And in turn the New Amsterdam, the stock is owned largely by the Consolidated?

A. Yes, sir.

8741 Q. Which was it, 1900 or 1902 when the first arrangements were made with the Central Union?

A. I said approximately 1900.

Q. Were you there?

A. At the general office?

Q. When the arrangement was made which you testified to?

A. I was not.

Q. How do you know anything about it, when it was made?

A. Because I found charges in our account that ran quite a few years back to somewhere about the time I have testified.

8742 Q. That is the only basis of your knowledge?

A. Yes, sir.

Q. Is something you found somewhere in the books?

A. Yes, sir.

The Master: In the books?

The Witness: In the books, in the books of account.

The Master: Not generally laying around the office somewhere.

Q. What books of account?

A. In the books of account you will find a charge 8743
I think for one-twelfth of a charge which I testified, against the Central Union Gas Company.

Q. As far back as 1900?

A. Yes, I should believe so.

Q. Who kept the books then? You didn't, did you?

A. No. My predecessor was a man named Wesslind.

Q. When did you start on the books?

A. In the spring of 1903.

Q. The same old rental has been charged all these years, you say? 8744

A. Yes, sir.

Q. No change, no increase in price?

A. No.

Q. In other words, the Central——

A. Ten and one-half per cent. right through every year.

Q. The Central Union enjoys the same contract of rental with the Consolidated Company today that it did in 1900?

A. Yes, so far as these amounts are concerned.

Q. And ten and one-half per cent. return on this amount has remained in the same all these years? 8745

A. It has.

Q. Was the arrangement between the two companies written, or was it oral?

A. As to these mains? Not that I have any knowledge of, counsellor.

Q. Just a gentleman's agreement, is it?

A. Well, I would call it an agreement made by the two companies.

Q. If it is an agreement, who was the agreement made with?

8746 The Master: It is quite apparent the witness does not know. He was not there at that time. All he knows is that he found a practice of charging 10½ per cent.

Q. You do not know whether it is an agreement at all or not, do you?

A. It must have been an agreement, or they would not have paid the bills, but as to who made it or whether it is in writing or not I do not know.

Q. Or as to its terms you do not know?

A. Yes, I know its terms, because it is set forth in the entries. It is an investment at 10½ per cent.

8747 Q. You do not know when it may be terminated, do you?

A. I do not.

Q. Have you given us all the details about it?

A. Yes, counsellor; I have given you the location of the mains and the amount of the investment and the rate of the charge and charge per annum. That is all the information that the accounting department records show.

The Master: And the size of the mains?

The Witness: The size of the mains and their different locations, your Honor.

8748 Q. On those mains you want a return of 10½ per cent?

A. 10½ per cent we charge, yes, sir.

Q. Is depreciation figured in that? You charge on the basis of what it costs to lay the mains?

A. Yes, the actual investment.

Q. You do not know what it costs the company, do you, to lay those mains?

A. I know what the investment of the company was.

Q. How much was it per lineal foot?

A. There being different sizes, I could not an- 8749
swer your question. There are three different sizes of mains there.

Q. Take the 8 inch size, how much did it cost the Consolidated per lineal foot?

A. $1.92.

Q. Per lineal foot?

A. Per lineal foot.

Q. That is the complete cost?

A. Yes.

Q. That is for excavating, digging a trench, restoring the pavement—everything?

A. The total cost of laying the main as shown 8750
by this record.

Q. Per lineal foot?

A. Yes, sir.

Q. That includes connections, does it?

A. Yes, sir.

Q. How about the 20 inch?

A. $7.32.

Q. Per lineal foot?

A. Yes, sir.

Q. That includes everything, all kinds of costs?

A. That includes all the costs that were charged
to that investment when it was made. 8751

Q. I mean laying the pipe?

A. Yes.

Q. Digging the trench?

A. Yes.

Q. Putting the dirt back?

A. Yes.

Q. Restoring the pavement?

A. Whatever it was necessary to do to get that main down.

8752 Q. And making connections. How about the 24 inch mains?

A. $9.50.

Q. That includes everything?

A. Yes, sir.

The Master: Why is there such a wide variance between the 8 and 20 inch from $1.92 to $7.32?

The Witness: That would be an engineering question, your Honor, I would not attempt to answer.

Q. You do not know when that was laid, do you,
8753 this pipe?

A. When this was laid? Yes. Somewhere about 1898 or 1899.

Q. 1898?

A. Yes; somewhere about that.

Q. It was after the Consolidated Company was created?

A. Oh, yes, the Consolidated Company was created in 1884.

The Master: Do you claim as part of your invested capital what it cost you to build mains in the Bronx?

8754 Mr. Ransom: The very purpose of this proof, as appears from our inventory—a part of our necessary proof is showing deductions we have to make on account of these things. We deduct from what would otherwise be our capital—the——

The Master: The cost of laying those mains?

Mr. Ransom: The value of these and other properties which are not used now by the Consolidated, but are used by other companies, as those mains were laid at a time when the

Consolidated Company would have had use for 8755
them.

The Master: All right, go ahead.

Mr. Ransom: They are now being used by another company; therefore, they are no part of the rate base in this case. We have got to show what deductions from the rate base must be made. We have got to show the effect on our operating expenses.

Q. The dock that you say you pay rent to the City for, the Consolidated Company has not any use for that dock at all, has it?

A. At 21st Street? 8756

Q. Yes.

A. Why, yes, of course, the 21st Street dock is used by the Consolidated Gas Company, in part.

Q. And is that the same dock that you rent out to the Astoria Company?

A. Part of that dock is used by the Astoria Company and part by the Consolidated.

Q. And you charge them ten per cent, do you?

A. Charged them ten per cent?

Q. Ten per cent of the rental?

A. No, sir.

Q. Is that the dock that is based on the per load?

A. No, 21st Street is the bulkhead rented from 8757
the City, and it was computed that 18 per cent of the 21st Street dock was utilized for the purposes of the Astoria Company, and I therefore included in the charge against the Astoria Company 18% of the rental paid by the Consolidated to the City of New York.

Q. Is that arrangement in writing?

A. Which arrangement?

Q. Between the Consolidated and the Astoria Company.

8758 A. I believe not.

Q. Whereby they pay 18%?

A. I believe not.

Q. How long has that been in existence?

A. That was started as of January 1, 1909.

Q. Is that the same rental always paid?

A. Yes, it has been $26,000.

Q. No change?

A. No change whatever for all these years.

Q. During all these years?

A. Yes, sir.

Q. And that is based, is it, on the loads, the
8759 number of loads?

A. What is based on the loads?

Q. The 18%.

A. Yes, upon the relative use of that bulkhead, Counsellor.

Q. Between the Consolidated and the Astoria Company?

A. Right.

Q. And the relative number of loads in 1909, or the relative number of loads in 1919, or when?

A. The relative number of loads in 1909, when this computation was made.

Q. It may be now, for all you know, that the
8760 Astoria Company is using about 75% of that?

A. There may be and probably is some fluctuation as to the ratio.

Q. I mean since 1909 you have not refigured it or recomputed the load?

A. No, sir; it has stood at that since.

Q. So it may not be in proportion at all as to the relative uses by the two companies now?

A. There would be a relative variation between 1909 and now; yes, sir.

Q. Such things have varied a good deal since 8761
1909, have they not?

A. I am not prepared to say how much they have varied.

Q. So you cannot say now, can you, what proportion of that bulkhead or dock at the 21st Street station is used by the Astoria Company?

A. At this present time?

Q. Yes.

A. I cannot.

Q. Will you please look at Exhibit 178 and tell me what bulkhead or dock you have just been referring to that you computed 18% between the Astoria 8762
Company and the Consolidated on?

The Master: What sheet?

Mr. Chambers: Sheet 5 of Complainant's Exhibit 178.

A. Well, these charts, Counsellor, do not convey any impression to my mind. I am not an engineer.

Q. You have not much confidence in this exhibit?

A. No, I do not mean that, but I do not know how to read a blue print intelligently as an engineer would. We know that the bulkhead at 21st Street belongs to the City because we pay a rental for it, and that total rental so paid during the year, 8763
for which I made this arrangement, we apportioned space based upon its relative use.

Q. Where was that bulkhead?

A. It was at 21st Street.

Q. That is all you know?

A. But to identify it on a chart, I would not attempt to.

Q. There is not any bulkhead at 21st Street?

A. Oh, yes, there is. We do not pay rent for nothing, you know.

8764 Q. There is a street running in front of the property there?

A. And there probably is a bulkhead at the other side of the street, but I do not know that.

Q. In other words, you would not attempt to locate it on this exhibit?

A. No, sir; I would not attempt to locate it on the chart. That is not an accounting question.

Q. The next piece of property that you speak of is on 42nd Street?

A. 42nd Street, yes. The West 42nd Street station.

8765 Q. What block? You gave the block?

A. I did.

Q. What block was it?

A. It was Block 1089, and Block 1107.

Q. When was the arrangement between the two companies made as to that?

A. At the same time for all these three stations, Mr. Chambers, as of January 1, 1909.

Q. That is a bulkhead proposition partially, is it?

A. Yes.

Q. And some uplands, too?

A. There was some land there at that station

8766 used.

Q. Could you identify it on this exhibit 178?

A. I would not attempt to.

Q. Who was Wheelock whose value you took?

A. Wheelock was the real estate expert in the first 80-cent gas case.

Q. For the complainant company?

A. For the complainant company; yes, sir.

Q. You did not take the values of the other experts for the defendants, did you?

A. No, I took Wheelock's valuations for the pur- 8767
pose of these computations.

Q. Nor did you take the Court's computations?

A. I took Wheelock's valuations, as I testified.

Q. Was that arrangement in writing?

A. There was no formal agreement between the companies, so far as I ever knew.

Q. And it has remained unchanged all these years?

A. Right, sir.

Q. That is, they pay the same rental today?

A. Yes, sir.

Q. As they paid in 1909? 8768

A. Yes, sir, $26,000. a year.

Q. You say $26,000.?

A. Yes.

Q. I do not see any such figure in your testimony here.

A. You should be able to find it, counsellor.

Q. You have got $8,700. (indicating paper). I am talking now of just the 42nd Street property.

A. That plus that, plus that (indicating), is $26,000. in all.

Q. But this particular one is $8,700.?

A. That is 42nd Street you have there, sir. 8769

Q. Yes.

A. $8,700.; yes, sir.

Q. What discharging apparatus is it you have included here?

A. At 42nd Street?

Q. Yes.

A. The apparatus located adjacent to dock for the purposes of discharging coke from boats, and coal, and anything that came in there at the dock.

Q. You mean it is a derrick?

8770 A. Yes.

Q. And on what is that based?

A. Based upon the Consolidated Gas Company's actual investment in that apparatus.

Q. And when did the Consolidated Gas Company make that investment?

A. I am unable to say.

Q. What is the amount of it? In other words, what did the total discharging apparatus cost?

A. The book investment of the apparatus at West 42nd Street is $60,720., and I ascertain that 32 per cent of that amount was applicable to handling
8771 Astoria coke.

Q. How did you figure that out, that 32 per cent?

A. It represents the tonnage of coke as compared with—it represents that proportion of the tonnage of Astoria coke to the tonnage passing over the dock during a given time.

Q. As of 1909?

A. Yes.

Q. And you have not computed it since?

A. I have not.

Q. So it may not be that proportion now?

A. The proportion would vary, and probably has,
8772 yes, sir.

Q. What was the investment of the company in the discharging apparatus at 21st Street?

A. At 21st Street the investment was $55,550.

Q. What did it consist of?

A. Coke handling apparatus. The same type of apparatus as is at West 42nd Street.

Q. You mean a derrick?

A. Derrick, hoist and tackle.

Q. It is a derrick and its appurtenances?

A. Yes, you might say that, although that is an

engineering question that I would not attempt to 8773
explain in any detail.

Q. And the 21st Street charge for the discharging apparatus was based on the cost?

A. $55,550., of which I ascertained 18 per cent was applicable to the Astoria coke.

Q. And that was figured in 1909?

A. Yes, sir.

Q. And no change has been made since?

A. No, sir.

Q. The East 111th Street station, could you identify that from the map?

A. No, sir. 8774

Q. If I showed it to you?

A. No.

Q. What block was it?

A. East 111th Street is on Blocks 1704 and 1712.

Q. The hoisting apparatus was the same as at the other two stations?

A. Yes, sir.

Q. The same kind of a hoisting apparatus?

A. So far as I know.

Q. And the arrangement was fixed in 1909?

A. It was.

Q. Upon what was that based for the 111th 8775
Street station?

The Master: You mean the cost of the apparatus?

A. The cost of the apparatus as shown by the Consolidated Gas Company's records, actual cost.

Q. What was that cost?

A. And all of it was charged to the Astoria. That was all used for handling Astoria coke.

Q. What was the cost of that apparatus at the 111th Street station?

A. $17,364.69.

8776 Q. So that the Consolidated Company does not use that dock or bulkhead at all?

A. No, that is all used for handling Astoria coke, Mr. Chambers.

The Master: How much was the percentage charged there?

The Witness: On all this apparatus 15 per cent.

Q. On the real estate you took Wheelock's values?

A. I did.

Q. The same Wheelock that you spoke of a minute ago?

8777 A. Yes.

Q. The witness for the complainant in the other case?

A. Yes, I testified to that.

The Master: He is now testifying to 111th Street.

The Witness: Yes, Wheelock for all these places.

Q. Do you know how much was in that agreement or understanding; how much for Block 1174, Lot 5?

A. How much in money or feet?

Q. Yes.

8778 A. Yes, I can tell you that.

Q. All right, tell us, will you? It is all in pink on these maps.

A. Which station, Mr. Chambers?

Q. 111th Street.

A. 111th Street. Block 1704, there was 17,345 square feet.

Q. That is the only way you have of describing it?

A. Yes, sir.

Q. At 42nd Street?

A. 10,710 square feet. 8779

Q. These are excluding the bulkheads?

A. Yes.

Q. 21st Street?

A. 8,400 square feet.

Q. How much bulkhead was there at 111th street? That will be in block 1712.

A. In block 1712. I ascertained that three-quarters of that bulkhead was applicable to Astoria coke.

Q. I thought you said that the Consolidated Company did not discharge or take on any coke or did not use the discharging apparatus. 8780

A. I said that the discharging apparatus was all charged as handling Astoria coke.

Q. What does the Consolidated use the bulkhead for, if they do not take on or discharge any coal or coke?

A. I am unable to say, Mr. Chambers, from my records here, as to what other purpose that bulkhead was being used for at the time I made this investigation. I am able to say from the records I made at that time, that it appeared that three-quarters of the bulkhead was being used by the Astoria, and I, therefore, charged them three-quarters. 8781

Q. And you cannot say what the other quarter was used for?

A. No, I cannot.

Q. As to whether it was used by the Astoria or the Consolidated?

A. No. This is over ten years ago, and I cannot say at this time.

Q. Nobody has been up there to re-examine these three pieces of property at 42nd street, 21st street and 111th street, since 1909?

8782 Mr. Ransom: I object to the question, because there have been many people up there.

Mr. Chambers: I asked him whether any people were up there.

The Master: His question is whether anybody has gone up there and readjusted these figures.

A. I have already testified that no change has been made in the figures. We are still charging the same as we did in 1909.

The Master: Although there may have been a change in conditions?

8783 The Witness: Yes, sir.

Q. Did you ever go there to re-examine these properties from the standpoint of this charge?

A. No, sir.

Q. Who told you to take Wheelock's figures as to the value of the real property?

A. Nobody told me to take them. I took them on my own notion.

Q. That is on your own initiative?

A. On my own initiative, yes, sir.

Q. Why did you do that?

A. It seemed to be a very fair thing to do. That was the value the company was claiming and did

8784 claim on the property.

Q. Why didn't you take the other figures rather than Wheelock's? The Court disagreed with you.

A. The disagreement between the Court and Wheelock was infinitesimal.

Q. So you threw out the Court's and took Wheelock's?

A. I did.

The Master: Do you want me to take the Master's figures in that case, Mr. Chambers?

Mr. Ransom: He has opened the way for showing them. 8785

Mr. Chambers: I have?

Mr. Ransom: Yes.

Mr. Chambers: Go right to it. You proved the assessed——

The Master: You have not answered my question.

Mr. Chambers: Do I want you to take the Court's figures?

The Master: Yes.

Mr. Chambers: Don't want you to take anything about this because it all goes out; it is not part of the rate case. 8786

Mr. Ransom: The difference between Wheelock and the Court is infinitesimal on these properties.

Mr. Chambers: I don't know what they claim about it. This is not part of the case at all. It is a collateral matter.

The Master: Suppose you go on with your next question.

Q. These conveying apparatuses, when were they built, do you know?

A. I don't know.

Q. You don't know anything about their age? 8787

A. Oh, no.

Q. They were probably there before you came with the Company?

A. Quite possibly.

Mr. Chambers: Will you let me take the operating ledger for 1919?

Mr. Ransom: 1909?

Mr. Chambers: 1919.

Mr. Ransom: A or B?

8788 Mr. Chambers: Both.

The Master: Take A, Exhibit 272, first.

Q. Now taking operating ledger for 1919, ledger A, did you make the entries in this book?

A. I did not.

Q. Who did?

A. I would have to look at it, if you will bring it up here.

Q. Come down here and do it, will you?

The Master: I think it possibly would be better to have it up on the desk.

Mr. Chambers: All right.

8789 The Master: I permitted cross-examination on these books, that is not 1919.

Mr. Chambers: We have to show the very same thing as to the other years.

The Master: I don't think so. Just in a general way you may.

Mr. Chambers: We have got to go through and show all we showed before.

Mr. Ransom: He said they were kept in the same way.

Mr. Chambers: That is pretty general.

The Master: Make your questions general and put them in the form of leading questions,

8790 so as to get over it quickly.

Mr. Chambers: Just a few entries.

Q. You look at these to see if they are made by the same party.

A. All the entries on page 1 are all made by one man.

Q. What is his name?

A. Lane.

Q. Is he with the company?

A. He is.

Q. And available? 8791

A. He is in the Company's employ.

Q. He is not in a sick bed or lost his mind, has he?

A. The bad weather of the last few weeks there isn't any of us out. He may be home, for all I know.

Q. Take some other page, page 106; whose handwriting is that in?

A. The same handwriting, Lane.

Q. Page No. 85?

A. All the same handwriting, Lane.

Q. No. 285? 8792

A. All the same.

Q. 353?

A. The same.

Q. This book seems to be all the same. 436?

A. The same.

Q. 969?

A. The same.

Q. It seems to be all in Lane's handwriting?

A. Lane was assigned to this ledger this year, so far, I believe.

Q. So there is only one handwriting in this?

A. Only one that I have seen in these accounts 87 3 that I have looked through.

The Master: Well, Lane is the man assigned to that ledger?

The Witness: He is assigned to keep that ledger.

The Master: And unless he is away for a day or more, the entries would be all in his handwriting?

The Witness: Absolutely.

Q. What is his official position?

8794 A. He is not an official. He is one of our bookkeepers.

Q. You don't call him official?

A. We do not. He is not an officer.

The Master: What is this next Exhibit, 273?

Q. Yes, Exhibit 273, operating leger B; whose handwriting is—510, whose handwriting is that in?

A. Daley's, with exceptions. There is another handwriting inserted there for a while. He may have been on his vacation, or he may have been sick.

8795 Q. Whose handwriting is that, do you know?

A. It looks like Lane's handwriting, and so identify it.

Q. Page 509?

A. This Daley's handwriting back to March.

Q. Is he with the company?

A. He is. This handwriting I do not recognize.

Q. No. 546?

A. Daley's for July; Lane for a part of August and Daley for the balance of August.

Q. No. 586?

A. That is all in Daley's handwriting.

Q. 685?

8796 A. I do not recognize the handwriting for the first two months. Daley's from March on.

Q. 782?

A. Daley and Lane.

Q. 858?

A. All Daley's.

Q. 882?

A. Daley's and Lane's.

Q. Now, what is Daley's position?

A. He is a bookkeeper assigned to the accounting 8797
department and running that ledger.

Q. Where did he get his data from to make these writings in the book?

Mr. Ransom: I object to that; I think that has already been gone into.

The Master: Not as to 1919.

Mr. Ransom: Well, go over it again.

The Master: Yes.

The Witness: Shall I go over it again?

The Master: Yes. Generally speaking, where did Daley and Lane get their information from? 8798

A. Daley and Lane get their information from the pay roll distribution sheets, petty expense vouchers, audit sheets, or as they are called for this record, lists of invoices approved, and journal entries,—four sources.

Q. You don't know anything about the accuracy of these books; you did not go through them, did you, to see if they were accurately kept and see if what Lane and these other fellows set down was correct?

A. Personally?

Q. Yes. 8799

A. I did not.

Q. Does anybody?

A. Oh, absolutely.

Q. Who does that?

A. These bookkeepers make their postings from the four sources that I have described, and subsequently to the end of the month—which process, by the way, is somewhat of a check on the accuracy of the account, because the ledger must prove to a penny, must balance—and then in addition to that,

8800 all of the postings are read back by some clerk other than the man who made the postings.

Q. Is there anybody assigned by the Consolidated Gas Company to go through these entries to see that they are accurate and correct?

A. I have just described to you, sir, that we have every posting read back, in addition to the check by the man who made it himself. We have all these postings read back and confirmed as to their accuracy, and then the bookkeeper is obligated to pull his balance every month.

Q. In other words, the man who makes the entry
8801 is the man who checks the accuracy?

A. No; we have a man do it other than the man who made the entry.

Q. And who is that?

A. It depends on who is available.

Q. So that the bookkeeper who makes the entry will get another bookkeeper?

A. Yes, sir.

Q. To see if it is correct?

A. To check and read it back.

Q. But aside from that, there is nobody else that checks the items?

A. Oh, yes.

8802 Q. Who?

A. When it comes the end of the year we have an audit made by an outside firm of auditors who check all the postings.

The Master: He is talking about 1919.

The Witness: At the end of 1919 the same thing will be done.

The Master: But up to this time it has not been done?

The Witness: No, sir, not until the end of the year.

Q. Speaking of the checking for 1917, who did 8803
that?

A. The 1917 account was audited by Charles S. McCulloh.

Q. And 1916?

A. The same man.

Q. And 1915?

A. I think McCulloh, although back as far as 1915 it may have been that that firm of Church & McCulloh were then operating.

Q. 1914?

A. The same conditions. I would not like to say which one did it. 8804

Q. And 1913?

A. I can't state to a definite year. When you go back as far as 1913 there is no doubt whatever in my mind that the firm of Church & McCulloh made the audit.

Q. For how far back?

A. As far back as I have been with the company, to——

The Master: 1903?

The Witness: 1903, every year.

Q. In 1904 did they do it?

A. They made an audit every year, Counsellor. 8805

Q. Beginning with 1903?

A. And possibly before that, but I know since I have been with the company that audit has been made every year.

Q. And are they alive, the members of that firm?

A. Yes.

Q. When did they do that, at the close of the year?

A. After the close of the year, as soon as it is convenient for us to let them take the books, they

8806 get at it. They usually start along in the spring and take the necessary time to make the audit.

Q. All the entries in the operating ledgers for 1919 are all made up in the way which you described for 1918, are they?

A. In every respect, yes, sir.

Q. Payrolls, and so on?

A. The same routine in every respect.

Q. How about the 1917 operating ledger?

A. The 1917 operating ledger and the supporting data and all the subsidiary accounts are kept in exactly the same way as for 1918.

8807 Q. How about 1916?

A. The same conditions.

Q. And 1915?

The Master: We have been all over that. He said back to 1909—there was no change after the first of January, 1909. Prior to that there was a little difference, before the uniform system of accounts came in.

The Witness: Yes, sir.

Q. In other words, from 1909 down to date the company has kept the books in the same way?

A. That is right.

Mr. Ransom: With one exception.

8808 Q. What is the exception?

A. I explained the exception yesterday, that at one stage of the game, about four years ago, we made a change in our pay roll system for those men who are on an hourly basis. Otherwise it is the same in every respect now as it was in 1909.

Q. You cannot say that the entries for 1917 are all correct, can you, any more than you can for 1919?

A. Are all correct? I will say that I believe them to be.

8809

Q. Did you check them?

A. I did not.

Q. Did you check them for 1916?

A. I did not.

Q. Did you check them for 1915?

A. No, sir.

Q. Did you check them for 1914?

A. No, sir.

Q. For any of the years?

A. I have not checked them personally, no sir.

Q. Did anybody check them for you?

A. Yes, sir. I employed this firm of outside accountants for that very purpose. 8810

Q. To check them?

A. To check them carefully.

Q. So you don't know of your own knowledge that they are correct?

A. When I employ a firm of outside accountants and they spend six months to do that, and they give me a certificate, I presume they are correct.

Q. I mean of your own knowledge?

A. Of my own knowledge?

Q. Yes.

A. That certificate is my authority that the books are correctly kept. 8811

Q. But of your own knowledge you don't know?

A. I have not checked them, no, sir.

Q. What do you do there in regard to these entries, just exactly what is your function?

Mr. Ransom: I object to the question. It was comprehensively and exhaustively gone over in the examination prior to the admission of these books.

The Master: Objection sustained.

Mr. Chambers: Exception.

8812 Q. What part do you take in the making of these entries in the book?

Mr. Ransom: I object to the question on the same ground.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Do you take any part at all in the entries in these books?

Mr. Ransom: I object to that on the same grounds.

The Master: Objection sustained.

Mr. Chambers: Exception.

8813 Q. Did you have anything at all to do with the books that have been offered in evidence for 1919, 1917, and down to 1907?

Mr. Ransom: I object to the question.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Did there come into your hands the supporting data for the entries in these books, speaking of the ones that have been offered in evidence yesterday and to-day?

Mr. Ransom: I object to the question. We have gone all over that.

The Master: I will allow it.

8814 A. Why, a considerable portion of the supporting data passes through my hands. I cannot truthfully say that all of it does, of all these thousands of sundry creditors' bills that come to us that require checking, verification and audit and approval, I see perhaps ten per cent of them. The other ninety per cent go through a perfect routine. Some of them quite frequently are brought to my desk on a question of classification.

Q. How many men in your immediate department did you have working for you in 1907?

A. How many men were there in 1907? 8815

Q. In your acounting department?

A. I should say that in 1907 we probably had about twelve or fourteen men.

Q. Has that remained about the same?

A. No, there are more men there today.

Q. You mean mostly bookkeepers?

A. Yes, sir. The great demands of these voluminous reports required by all kinds of public bodies have increased to the point where we have had very substantially to increase our force in order to make these public reports.

Q. Did the same practice exist in 1907 and on 8816
as existed in 1918, in regard to the superintendence of the various plants?

A. I don't know that I grasp the thought in your mind.

Q. The receipt of oil, and coal, etc.?

A. Yes. All the underlying data at street departments and stations and shops are the same today as in 1907.

Q. They are all under a superintendent?

A. At each one of these departments, yes, sir.

Q. And it is to these superintendents that the company looks for the correctness of the reports that come in from the various stations, is it? 8817

A. No, I would not say that.

Q. Well, that is the basis of most of your entries?

A. But those records come to us in the case of the stations, for example, the records from the stations as to material received and used comes to us from the engineer of manufacture. He in turn gets that, as I have already testified, from the local superintendent, but we expect to get that record from the engineer of manufacture as the responsible man.

8818 Q. Who was he in 1907? Was it the same man that is there now?

A. Yes, my recollection is that twelve years ago the engineer of manufacture was the same man that holds that position today.

Q. What is his name?

A. George E. Woods.

Q. How about the superintendents of the various plants—take the 21st Street plant. Is the same superintendent there now as was there in 1907?

A. No, sir.

Q. What has become of the one who was there
8819 in 1907?

A. I should say in 1907 a man named Keegan was superintendent there. He has been retired and is now on the pension role.

Q. But he is alive?

A. So far as I know. I haven't seen him in a number of years.

Q. Has there been only one change of superintendence during these years at the 21st Street plant?

A. I could not testify as to that.

Q. You can only think of the one change?

A. That is the only one that occurs to my mind,
8820 that Keegan went out, and Barlow is now superintendent there.

Q. How about the 42nd Street plant. Is the same man there?

A. No. At 42nd Street in 1907 a superintendent named Downs was in charge.

Q. How many changes have occurred in the 42nd Street plant that you recall, in superintendents?

A. I can only recall that Mr. Downs was there until he died, and who took his place after that I had no occasion to inquire.

Q. The 14th Street plant, how about the super- 8821
intendent of that? Has that changed since 1907?

A. There have been several changes there, but just what they are I am not prepared to testify to. I know a man named Ritchie is there now.

Q. You don't know how long he has been there?

A. No, sir.

Q. How about the 99th Street plant?

A. The man who is now at 41st Street was formerly there, Mr. Barlow, and when Barlow was transferred to 21st Street a Mr. De'astro was made superintendent of 99th Street. Who was there in 1907 I do not recall. 8822

Q. The superintendent of mains and services, has he been there since 1907?

A. No, back in 1907 the superintendent of mains and services was Mr. Colin C. Simpson, who retained that position until he died. His son now fills the same position.

Q. Exhibit 260 appears to be the operating ledger for 1906, is it?

A. I don't know the exhibit numbers.

The Master: If you say it is marked that way, it must be.

Q. In this exhibit for 1906, No. 260, where is the account for deposits made by consumers for the excess between the 80 cent rate and the amount collected under the injunction? 8823

Mr. Ransom: I object to that question as assuming that there was such an account.

The Master: I will assume the question to be, is there such an account.

Q. Is there such an account?

A. In 1906 I should say there was.

Q. Will you show me that?

8824 A. You will find it under the title, "Gas sales suspense".

Q. I have such an account here. Will you look at it. Is this it on page 737?

A. That is the gas sales suspense account, and represents the difference between 80 cents and one dollar.

Q. What is it that is shown in this book?

A. It is a ledger account representing the difference. It was set up under order of the Court, beginning with May, 1906.

Q. What is the difference when this book closed?

8825 A. During these succeeding months there had accumulated $1,529,623.64.

Q. Are you carrying that account to-day?

A. No, sir.

Q. I mean in 1919?

A. No, sir.

Q. When did you stop?

A. When the Court directed us to.

Q. Do you remember when that was?

A. During the year 1909.

Q. Will that be shown in the 1919 ledger?

A. That balance is carried forward to the succeeding year, and accumulated month by month,

8826 until it was finally closed.

Q. It wound up in 1909, did it?

A. That is my recollection.

Q. Then it should be shown in the operating ledger, shouldn't it?

A. The operating ledger for 1909.

Q. Under the same title?

A. Carried under the same title.

Q. I don't see any such account.

The Master: Look in 1908.

(Witness examines book.)

The Master: Where did you find it, Mr. 8827
Brundage?

The Witness: Folio 1065 of the 1909 ledger.

Mr. Chambers: Exhibit 263.

Q. Does it end there? Is that the windup of it?

A. The account was closed in that year.

Q. Is that correct, $6,936,175.20? Is that the balance, or is that all the accumulation?

A. All the accumulation is this figure $6,936,-175.29.

Q. Does it show how much of that was paid out or returned to depositors?

Mr. Ransom: I object to that as immaterial. 8828

The Master: I will allow that.

Mr. Ransom: Exception.

A. The entry shows that the repayment under the 80 cent gas act aggregated $6,285,917.58 as of December 31, 1909.

Q. Leaving a balance of how much?

A. Leaving a balance which was transferred to sundry creditors of $497,327.75.

Q. And are you still carrying that yet?

A. Not at that figure, because these statements are being made on account of those old claims from time to time, and as they are paid that account 8829
is gradually reduced.

Q. What will that be under, sundry creditors?

A. Sundry Creditors' Ledger, under the title of "Sundry Parties".

Mr. O'Brien: Sundry parties, question mark?

The Witness: There is no question mark in the account.

Mr. O'Brien: Well, there is here.

The Master: You need not answer that question, Mr. Brundage.

8830 Q. The 1919 entry; show me where that is in the 1919 book?

A. In 1919, turn to the sundry creditors' ledger and you will find the account.

The Master: I do not see any purpose to be served by this examination.

The Witness: Turn to the index.

Q. Is that book in evidence that you are using?

A. Yes, it is part of this ledger.

Q. Is that book in evidence?

A. This is an exhibit, part of the ledger.

The Master: We better have it as part of the
8831 ledger.

Mr. Ransom: It has been marked as a separate exhibit Complainant's Exhibit 278.

The Witness: Here is the account (indicating in book).

Q. What is the balance there?

A. The balance is $430,692.63.

Q. Now, what I want to know is where did you get your basis for these entries in regard to this account, or did anybody get his basis for the entries?

A. That account, as I have testified, Counsellor, was set up each month for the difference between
8832 the bills rendered to the consumers at $1 and the amount which the Court allowed put into our earnings.

Q. I know, but where did you get the basis of the account from?

A. Why, I needed no further basis except that account.

Q. How did you know how it increased or decreased?

A. It did not increase or decrease. It continually increased because every month I set up twenty

cents a month on every foot of gas sold and cred- 8833
ited it to that account.

Q. Where did you get your basis for the payments out of the fund, for the six million payments?

A. Oh, that was actually paid?

Q. Yes, where did anybody get it? You did not get that information, did you?

A. No, I did not get it, but it came through the commercial department who have all the immense routine required to make those refunds.

Q. Who has knowledge of that, what person?

A. Why, I should say if you give me twenty-four 8834
hours to go back and refresh my memory and get my data together, I could testify on that very intelligently.

Q. We want to know where the supporting data is for this particular item?

Mr. Ransom: We object to this. It was all done under the order of this Court. The machinery for refunding, the machinery under which these moneys were temporarily held, pending the outcome of the case in 1909, has no bearing upon the issues in this case.

Mr. O'Brien: Oh, yes, it has a very serious 8835
bearing.

The Master: What is the question?

Mr. Chambers: I am right to a pertinent inquiry, and that is the basis of the entry here in the books, for all these entries in regard to this fund.

Mr. Ransom: I have an objection to it.

The Master: I am going to find out, then I am going to stop this examination.

By the Master:

Q. Do I understand, Mr. Brundage, that when the United States Supreme Court decided against

8836 the complainant company the United States Circuit Court made an order directing the refunding of this money?

A. They did.

Q. And provided how it should be done?

A. They set up the machinery, sir.

Q. And machinery was set up?

A. It was set up by the Court's direction.

Q. And generally speaking customers had receipts of some kind or vouchers showing how much was paid?

A. They produced the evidence on which the
8837 payments to them were predicated, and the payments were made by the court officers.

Q. By court officers?

A. Yes, sir. The court appointed men for each disbursing bureau.

Q. Do you recall where the vouchers are now? Do you know where they are?

A. Why, we have, I should say—I believe we have some of those records, your Honor. Just what they consist of I am unable to testify.

Q. But your recollection is that the payments were made under the supervision of the court officers?

8838 A. They were, sir, without any question.

The Master: I will not permit any further questions on that.

Mr. Ransom: Was there a confirmatory order by the court after those payments were made?

The Witness: These payments were made by the Court, your Honor and they were charged in our accounts to the account you just looked at, Mr. Chambers, repayments under the 80 cent gas act.

The Master: I am not going to permit 8839
another question on that line.

Mr. Chambers: He has not answered me yet as to where he got the basis of his entry.

The Master: And I will not let him answer it.

Mr. Chambers: I will ask you what vouchers did you have?

The Master: The question will not be answered. The Master directs the witness not to answer.

Q. Were there any vouchers at all?

Mr. Ransom: I object. 8840

The Master: The same ruling by the Master.

Mr. Chambers: Exception.

Q. Are those vouchers available if there are any?

The Master: The same ruling by the Master. If it is not a fact that the Court supervised this payment of money, you can bring it to my attention; if the Court supervised the payment of this money, I am not going to allow any more questions on it. The incident is closed. I will not permit any more on that.

Mr. O'Brien: Your Honor now refers to the payments that were made; not the balance that 8841
is still in the hands of the complainant?

The Master: I am ruling that I have permitted this witness to testify to an account whch showed the money which came in in excess of some six million dollars, to the amount that was paid out in excess of some six million dollars, showing a balance still on hand according to their books to the credit of that account of some four hundred and odd thou-

8842 sand dollars, and I will not permit another question. Proceed to the next line.

Mr. Chambers: We take an exception.

Mr. O'Brien: I don't suppose that precludes me in my examination going into certain matters that have not been covered by the questions asked.

The Master: It precludes you from covering this subject matter.

Mr. O'Brien: I have some questions to ask when I come to that subject.

The Master: I will rule on them when the
8843 questions are put.

Mr. Chambers: You see, the way it is left now, we haven't any way of checking up the entries.

The Master: Oh, yes, you have.

Mr. Chambers: Not that I know of.

The Master: You can get, of course, the Court's confirmatory order on it and find out what was done.

Q. Take this 1906 operating ledger. Do you know who made the entries in it, what employees of the company?

8844 A. Looking over the first 200 pages and the index, I am able to identify all the handwriting as made by a man named Norton.

Q. Is he with the company now?

A. He is.

Q. What is he; a bookkeeper?

A. He is a bookkeeper.

Q. In this I find an account entitled, "legal expenses". Where do you get your information for that entry, or where did Norton, page 665, for instance, "Gas operating expense, gas rate appeal,

$50,000". Where did he get his information for 8845
that entry?

A. Those are all journal entries, counsellor, during the year, and the journal entries themselves would recite what they are for. Just that you may know the essence of the account, the company charges each month to its legal expenses one-half of what it believes will be necessary to provide for the legal expenses of the year, and at the end of the year, when the actual expenses are known, the difference, whatever it may be, between the forecast and actual, is reversed.

Q. So without the journal there could not any- 8846
body trace these expenses?

A. This is posted from the journal.

The Master: The experts for the defendants, in order to verify or examine into any entries in this operating ledger from 1906 to 1917, and in fact, 1918 and 1919, would have to resort back to the journal and other books?

The Witness: Yes, your Honor; they are all available, at their disposal, anything they want.

Q. Take this item legal expenses, found on page 665, where does the writer of the journal get his 8847
information from as to that account?

A. This particular account?

Q. Yes.

A. It would come to him in a standing order from the first of the year, that the estimated legal expenses for the year are going to be so many dollars; one-twelfth is to be established each month, pending the determination of the actual expenses charged to legal expenses.

Q. So really it is not an actual expense?

8848 A. It is a forecast for eleven months and an adjustment at the end of the twelfth month.

The Master: Mr. Chambers, I thought you understood by this time that a journal entry isn't anything, simply a means of setting up charges and debits and credits, generally speaking.

Q. And who has charge of these? Are they vouchers from which the journal entry is made?

The Master: No, the witness has told you, Mr. Chambers, it is an arbitrary figure put into the journal for the purpose of carrying
8849 it into the ledger, which at the end of the year they have a voucher for the amount of the lawyer's bill, and if that is less than the journal entry, it is charged back and adjusted, and if it is more, the same thing is done. What is the use of asking questions over and over again?

Q. And back of it all is the bill?

A. Back of it all are the original sundry creditors' bills, yes, sir.

The Master: When the final charge is made?

The Witness: Yes, sir.

Q. And who passes on the correctness of that charge?

8850 A. For the legal bills?

Q. Yes.

A. Usually an executive officer of the company, or the president or one of the vice-presidents.

Q. It has the approval of one of the officers of the company?

A. Certainly, or it could not go through our accounts or be paid.

Q. Now, bad and doubtful debts, I see you have such an account as that?

A. We have.

Q. For each of the branch offices? 8851

A. Yes.

Q. And you seem to have four here, Hester Street, Irving Place, 42nd Street and Third Avenue?

The Master: That was in 1906, was it?

The Witness: Yes, there were four commercial offices in that year, your Honor.

Q. Where did you get the basis for that entry?

A. Reports from each of the commercial departments.

Q. You mean from the superintendent of them?

A. Signed by the superintendent of each commercial department. 8852

Q. And without that voucher, of course, the entry could not be traced, the authority for the entry?

A. You trace that entry back to the journal, and from the journal back to the branch office report and from the branch office report back to the supporting data in the branch offices. I testified to all that routine before, but I will do it again, if you want me to, Mr. Chambers.

The Master: Perhaps I don't want you to.

The Witness: I hope you don't, your Honor.

Q. There hasn't been a word said in this case before about bad debts, that I have heard of.

The Master: No, but all of these entries are 8853 in the same class.

Mr. Chambers: Well, are they?

The Master: Yes.

Q. Now, wharfage, what is that?

The Master: That explains itself. I am not going to permit an examination on that.

Q. Where did you get your authority for this entry as to wharfage?

The Master: I won't permit that, because bills are rendered by people who have a right to charge for wharfage.

8854 Mr. Chambers: These are for charges made to a lot of individuals.

The Master: Well then, they charge people for tieing up to their docks. Wharfage is wharfage.

Mr. Chambers: What I would like to know is whether they have a dock master.

The Master: I don't want to know about that.

Mr. Chambers: Your Honor will rule it out?

The Master: Yes. I do not want to know.

Q. I ask you where you get your supporting data for this entry on page 714 of this exhibit for 1906,
8855 entitled, "Wharfage, sundry debtors".

The Master: Objection sustained.

Q. For the 14th street station?

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Now, "Consumers' deposits", where do you get the supporting data for that?

Mr. Ransom: I object to that; that has already been gone over.

The Master: Objection sustained. It has been gone over under the general category of the method of doing business. It must be apparent to counsel, as it is to the Master, that
8856 when a customer makes a deposit, a record must be kept in the commercial office, and that record must be carried through the books. What is the use of wasting time on it.

Q. Advertising, where do you get the supporting data for that?

The Master: Same objection and same ruling.

Mr. Chambers: Exception.

The Master: If you want to ask who orders advertising, I will let you do it, but when you

ask for supporting data, it is quite apparent 8857
where you will find the supporting data, the advertising bills.

Q. What advertising is that?

A. Back in 1906?

Q. Yes.

A. Newspaper advertising is a big item, I should say, sir.

The Master: The Company is quite generally advertising appliances every year?

The Witness: Yes, all kinds of gas consuming appliances.

Q. Each entry appears to be entitled "R. E. 8858
Livingston"?

A. The advertising is placed through the medium of his office.

Q. You pay him?

A. He is the editor of "Gas Logic", and as I have said, he looks after the advertising.

The Master: That was covered by Mr. O'Brien's questions pretty fully.

Q. Now, the Aid Society Fund Investment, what is it for?

A. The investment——

The Master: It explains itself. 8859

Mr. Chambers: Your Honor rules it out?

The Master: I do.

Mr. Chambers: Exception.

The Master: I won't permit any more questions, Mr. Chambers, directed to the witness to ask him where supporting data is for every other month.

Mr. Chambers: I am trying to avoid asking him about the supporting data as to the things we have had.

The Master: The Master rules that nothing

8860 can be accomplished by asking this witness these questions, because after all, if counsel for the defendants believe it is necessary, as they probably will, to analyze these books and examine into the various items and various accounts, they will send expert accountants up there, who will very quickly find out what they want. There isn't any sense in wasting the time of the Court on that line of examination.

Mr. Ransom: We sent them schedules showing what we claim.

The Master: Don't tell me what you sent them all the time.

8861 Mr. O'Brien: If it took Mr. Teele seven months with twenty men to get up the schedules he presented to us, how long and how many men would it take to go over these records for 1906? And that is why I have said several times here that if there was to be frank disclosure, counsel for complainant ought to say whether he was going to put in issue here in this case, as he alleged in his complaint, every year since the statute was enacted, because it involves a tremendous lot of investigation.

The Master: I know that.

8862 Mr. O'Brien: Tremendous, it would cost a million dollars to set about it.

The Master: I appreciate all that, and yet it seems to me, although I do not want to be understood as saying that you should or should not do something in a certain way, that if the investigators for the defendants went up to this office and went through these accounts and checked them up from time to time so as to satisfy themselves that they were correctly kept, analyzing only those accounts that could

be subject to question by defendants, that it 8863
can be done very quickly. However, I am not ruling on that question, I am just ruling on proof offered here.

Mr. Ransom: We have made a full statement of what we propose——

The Master: You say they have been fully apprised, and they say they have not, and I don't want any argument about it.

Mr. O'Brien: The point is, if there is a declaration even now that they intend to assert that the statute has been unfair since it was on the statute books, and offer evidence on that, 8864
why, we will know the scope of this trial, but there is no such declaration as yet in this case. That is one of the reasons I made objection to these books.

Mr. Ransom: This company has always believed and has always contended that this statute was unfair.

The Master: Gentlemen, I don't want any more of it. The next question.

Q. On page 149 I find an entry "National City Bank, unclaimed dividend". What is that about?

Mr. Ransom: We object to that. 8865

The Master: Objection sustained. Analysis of the books will explain those items.

Q. And where did you get your supporting data for that?

Mr. Ransom: I object to that question.

The Master: Same objection, ruling and exception.

Q. On page 148 there is an account of cash. What is that?

The Master: Same ruling by the Master, and

8866 I shall request Mr. Chambers not to repeat any more questions, because my rulings will be the same. Any inquiry of this witness as to what certain accounts mean, I shall rule out on the ground the books themselves are the best evidence and must be analyzed to get the meaning and find out what they are.

Mr. Chambers: I shall take an exception. That is, your Honor won't allow me to inquire about any of these various accounts in here which do not relate to the stations.

The Master: No. I am going to ask you to
8867 have your accountant make such analysis of these books as you may deem proper, then if later on you want to examine this witness or any other witness, I will let you do it.

Q. Can you tell me in whose handwriting the entries are for 1917, being Exhibit 261?

A. An examination of the first 150 pages of the book shows it was kept by the same man, Mr. Norton.

Q. Will you look at 1908, and tell me if that is kept by the same man?

A. An examination of the first 150 pages shows
8868 that for the month of January and February of that year, the accounts were kept by the same man heretofore referred to, Mr. Norton; the subsequent months of the year were kept by a bookkeeper named deHart.

Q. And how about 1909?

A. (Examining book.)

Q. Is Mr. deHart with the company?

A. He is not.

Q. What became of him?

A. He resigned the better part of a year ago.

Q. Is he in the State? 8869

A. I don't know, sir. An examination of the first 150 pages of this book shows it was kept by deHart.

Q. The same man you referred to a minute ago?

A. Yes, for the ten months of the preceding year.

The Master: I suppose Mr. Chambers wants you to look through all these books, so you might as well get at it. Just look at 1910, and state whose handwriting the operating ledger for that year is in.

The Witness: 1910, for the first month or month and a half it was kept by deHart, and 8870 the balance of the ledger is kept by a man named Culver.

The Master: What is the name?

The Witness: Culver.

The Master: Is he still with the company?

The Witness: No, sir.

The Master: Where is he now?

The Witness: The last I heard of him, some six or eight months ago, he was in Georgia.

The Master: Now take 1911.

The Witness: This ledger shows that the entire year was kept by Culver.

The Master: Why don't you go all the way 8871 through it? You just took up one or two pages, didn't you, Mr. Brundage?

The Witness: Is it necessary that I shall do that?

Mr. O'Brien: Yes. Why don't you go through it?

The Master: Mr. Brundage, have you looked at this ledger for 1911?

The Witness: I have.

The Master: To what extent?

8872 The Witness: The first one hundred pages.

The Master: And you should say that ledger was kept by Culver?

A. I do so say.

Mr. Chambers: Is he with the company?

A. He is not.

The Master: He is the man who is in Georgia?

The Witness: In Georgia the last I heard of him. An examination of the first one hundred pages of the year 1912 shows that it was kept by the same man, Culver.

8873 Q. Now, 1913?

The Master: Mr. Brundage, I just want to ask you, when you say you looked through the first one hundred or one hundred and fifty pages, the likelihood is that if somebody else was on that book for any period of time you would find some entries on those pages?

The Witness: You would.

By Mr. O'Brien:

Q. Won't you state where there are different handwritings on the page?

The Master: No.

Mr. O'Brien: May I not ask?

8874 The Master: No.

Mr. O'Brien: Then I will go over the ground later on.

The Master: No, you won't.

Mr. O'Brien: I call your attention to the fact that there are different handwritings on some of these pages.

The Master: In the book he is looking at?

Mr. O'Brien: Yes, sir.

The Master: Very well, wait until he tells us.

A. An examination of this ledger for the year 1913 shows that for the bulk of the year running along to August or September, the ledger was kept by Culver. The subsequent months were kept by a man named Peterson. 8875

Q. Where is Peterson?

A. He is dead.

Q. Take the next book?

A. An examination of this book for the year 1914 shows that the ledger was kept by Peterson up to and including June. The subsequent months were kept by a man named Romaine.

Q. Where is he? 8876

A. He isn't with us any more.

Q. What is Romaine's first name?

A. I can't say his name. His initials were H. S.

Q. You don't know where he is?

A. I think he lives here in the City, but I am not sure of that.

By the Master:

Q. Now, 1915?

A. The ledger for 1915 was kept by Culver again.

Q. And 1916?

A. An examination of this ledger shows that 1916 was kept by Culver up to November. The month of December was kept by a bookkeeper named Ganung. 8877

By Mr. Chambers:

Q. Is he with the company?

A. He is.

Q. Now, 1917?

A. All of the year 1917 was kept by Ganung.

Mr. Chambers: That is all.

The Master: Mr. O'Brien, any questions?

Mr. O'Brien: I have in mind what your

8878 Honor has just said with respect to cross-examination of the witness after examination has been made by defendant's accountant and that has caused me to deliberate as to whether or not it might not be advisable to defer the examination.

The Master: I told you gentlemen so an hour ago. Now I am going to make you finish the cross-examination. I told you at the start I would make you finish it if you started it.

Mr. O'Brien: Of course your Honor has power to rule.

8879 The Master: I am going to rule. I tried to tell you gentlemen when you started with this cross-examination that it seemed to me you ought to defer it until you had your examination of the books. Now I am going to compel you to finish it, permitting you to recall this witness later on if you want to, but not placing any burden on the complainant.

Mr. O'Brien: Of course the witness' direct testimony related to the books of 1918, and as to those you permitted us——

The Master: A preliminary examination.

Mr. O'Brien: A preliminary examination,
8880 with a chance to make a personal examination as much as could be made in a brief few days.

The Master: Yes.

Mr. O'Brien: The operating ledgers for——

The Master: The operating ledgers for 1906 to 1917, you didn't have that opportunity. They were only brought in yesterday.

Mr. O'Brien: They were brought in at the last minute last night.

The Master: That is why when this witness finished his direct-examination I suggested

that you suspend your cross-examination in 8881
the same way that you did for 1919. You gentlemen insisted on going forward with your cross-examination and you will now finish it.

Mr. O'Brien: Well, it is only a minute ago that your Honor stated that the cross-examination, after the accountants had gone into these books, would be permitted.

The Master: Yes, if you recall the witness and you see that he gets here. That same rule applies to every witness. You can recall any witness that has been on at any time before this case is finished, for further cross-exami- 8882
nation, but the burden is on you to get him here.

Mr. O'Brien: Is your Honor going to rule that when Mr. Brundage gets off the stand Mr. Ransom can't recall him?

The Master: No, he can recall him for further direct. He can recall him fourteen times, if he likes.

Mr. O'Brien: I want to be frank with the Court, that there is no one among the defendants' representatives who claims to be a master mind, able to go over a series of books that 8883
cover voluminous matters that were offered at five o'clock last evening. I have a lot of matters that I am going ahead and ask this witness on, but I think in fairness to you and all concerned, that time might be saved by doing it all at one time.

The Master: Let me make my position clear, if I have not already done so. If you have any questions of this witness bearing upon these books, other than asking this witness to explain

8884 items in these books, I am going to let you ask him. The minute you go to the question, "what does this item mean, where is it in the journal, where are the supporting vouchers", I am going to rule it out on the ground that the books speak for themselves, and you can analyze the books to your heart's content.

Mr. O'Brien: Of course, your Honor can prognosticate what you are going to do with the questions I am going to ask, but I am going to test the witness' knowledge of these books.

The Master: Go ahead.

8885 Mr. O'Brien: I know that the examination preliminary to the books going in as of 1918 was limited, because we were only leading up to an objection.

The Master: That is correct, and I assumed when I allowed these books in evidence, that you would bring out with reference to these books the same matter that you brought out with reference to the 1918 books, and that is why I would not permit the preliminary cross-examination as to these books.

I will ask for the journal of 1918.

8886 CROSS-EXAMINATION BY MR. O'BRIEN:

Q. Mr. Brundage, your title is Chief Accountant, and you have complete jurisdiction over all matters of account?

Mr. Ransom: I object to the question as fully covered.

The Master: Objection sustained.

Mr. O'Brien: I don't know when it is covered, your Honor.

The Master: Objection sustained, Mr. O'Brien.

Q. Did the company keep a journal for each year 8887
the same as the journal for 1918?

A. It did.

Q. Were the same columns and the same entries made in the journals of other years as in 1918?

The Master: Applicable to the same subject matter.

A. Yes.

Q. In other words, you have three columns on the left in your journals, haven't you?

A. Yes.

Q. And in the first column what entries are made? 8888

A. Let me look at the journal.

Q. Can't you tell me without looking at the journal?

A. No, because I don't know what page of the journal you are talking about, or what you are referring to. Be specific.

Q. Now, don't be sassy.

Mr. Ransom: I object to the attitude of the counsel toward the witness.

Mr. O'Brien: I will request the Master to direct the witness to be respectful.

The Master: Yes, and I will direct counsel 8889
not to be disrespectful himself. There is no necessity for it. If you find at any time that the witness is disrespectful to you, all you need to do is to call it to my attention, not to take the matter into your own hands as you did a minute ago. The witness says he cannot answer that last question without looking at the journal. Please show it to him.

8890 Q. Will you say, Mr. Brundage, when I call your attention to the left——

The Master: Wait a minute. The last question has not been answered. You wanted to know what was in the first column, and he said he wanted to look at it. Let him look at it.

Mr. O'Brien: I want to ask him whether he can't tell us——

The Master: I want him to look at it now.

Mr. O'Brien: I am testing the witness' memory of these books.

The Master: I want him to look at it.

8891 Mr. O'Brien: I take an exception to your Honor's ruling.

The Master: Look at the page to which Mr. O'Brien refers.

The Witness: I am looking about it. He talks about a column, and I am not able to determine which column he refers to.

Q. I asked you about the first column on the left hand side of the page.

A. This right here (indicating)?

Q. No, that is the second column you are putting your finger on.

8892 The Master: Point out what you mean.

Mr. Ransom: I suggest that the book be brought up to the proper place, and that the witness take the proper place, and that the witness have protection from the course pursued by counsel.

Q. What is this first column used for?

A. It is not used.

Q. Is that so all the way through?

A. I believe you will find it so all the way through.

The Master: The first ruled column contains no entries?

The Witness: None. 8893

The Master: So far as you know all the way through?

The Witness: No.

The Master: Mr. O'Brien has looked at fifteen pages and finds none.

Q. The second column uniformly records numbers referring to what other record?

A. The second column is used to record the folio pages on which the debit postings are posted.

Q. Folio pages in what book?

A. In the operating ledger.

Q. Is every reference in the second column on 8894
the left, all the way through this journal, from beginning to end, a reference to a page in the operating ledger?

A. It is.

Q. What are the entries made in the third column?

A. Those are the credit entries showing the folios in the operating ledger to which the credit items are posted.

Q. They uniformly refer, then, to pages in the operating ledger?

A. Absolutely.

Q. Are there any references made in any of these 8895
columns to vouchers?

A. To sundry creditors' vouchers?

Q. Yes.

A. In these columns (indicating)? No. No, sir, absolutely not. Those columns to which you are now inquiring——

The Master: Have reference to ledger folios only.

The Witness: To ledger folios.

Q. They are all the way through this ledger?

8896 A. Through this journal.

Q. Through this journal?

A. Yes.

The Master: References to sundry creditors' vouchers are in the ledger, are they not?

The Witness: Yes, sir.

Q. Will you state who had charge of this journal in 1918?

The Master: Objection sustained.

Mr. O'Brien: It is only preliminary to another question, your Honor.

Q. Will you state who gives the directions to the
8897 clerk having charge of the journal, as to the distribution of amounts in the journal?

The Master: Objection sustained; it has been fully covered.

Mr. O'Brien: I do not think so, your Honor.

The Master: I do.

Mr. O'Brien: I will ask the witness specifically about these.

Q. I call your attention to page 3 of the journal for 1918, the first item thereon, entitled, "Amortization of debt, discount and expense. To amortize debt, discount and expense. For the proportion of the expense incurred with the issue and sale
8898 of $2,500,000 five-year 6 per cent debentures, dated February 1, 1915, to January 20, 1920, one-sixtieth to each month." Under whose direction was that distribution made?

Mr. Ransom: The answer would of course, be the order of the Public Service Commission which was offered in evidence. But I object to it.

The Master: I am going to let the witness say it.

Mr. O'Brien: I do not want counsel to testify

here and I do not want counsel to anticipate 8899
what the purpose of my question is. It may seem like a fool question, but it has a purpose.

The Master: But, Mr. O'Brien, I am not sustaining the objection because it was apparent to me what the witness' answer must be and will be, and just to indicate to you how useless the question is. Answer that question.

Mr. O'Brien: I will state right here, your Honor, that I am not going to take for granted that this man knows all about these books.

The Master: I will let him answer.

Mr. O'Brien: I want his answer, and not 8900
yours or counsel's.

A. Under the uniform system of accounts we were obliged to charge all the expenses incurred in connection with the debentures herein referred to, to an account that they call "Unamortized debt, discount and expense". It is charged to that account and as the debentures run over five years, sixty months, the accounting system very properly provides that one-sixtieth of that amount shall be amortized each month by taking it out of the account to which it is charged and charging it to this account.

Q. When the book refers to an expense in con- 8901
nection with the issue and sale of the bonds, what expense does that mean and where was it first recorded?

A. It is first recorded in the operating ledger for the year in which it was incurred.

Q. Will you point to the account in the operating ledger where that is explained?

A. We can probably find it, sir.

Q. The operating ledger for 1918 or 1915?

A. No, back of that. The operating ledger was

8902 set up and the charges incurred about four years ago.

Q. About 1915?

A. 1915, yes. I want the account "Unamortized debt, discount and expense." We will have to go back of this book I have. The details must be shown in the ledger previous to this one.

Mr. Ransom: The authorization was on December 1st, 1914.

The Witness: Now in order to trace the details of those expenses back, Mr. O'Brien, it will be necessary to see the original vouchers,
8903 the sundry creditors' vouchers, all of which finally got into this account here by this entry (indicating).

Q. By "this entry" you are referring to $32,497.87 on page 291?

A. Yes.

Q. Of the operating ledger for 1914?

A. Yes.

Q. Are those records in court?

A. They are not.

Q. Have they been offered in evidence?

A. They have not.

The Master: Are they in your office?

8904 The Witness: They are.

Q. Does this page set opposite the amount I have just read, 321, refer to a page in the journal?

A. It does.

Q. You are sure of that?

A. I am.

Q. The journal then, of that year, would give details of the expenses, would it?

A. Yes, that entry on folio 248 will explain what that is, and that in turn will lead back to the original vouchers.

Q. In what form would those vouchers be? 8905

A. I should believe that they would be sundry creditors' vouchers.

Q. Would the cash book of that year indicate who received that money?

A. Yes.

Q. Do you remember yourself generally in what way it was spent?

A. No.

Q. Was it discount on the bonds?

Mr. Ransom: I object to these questions.

The Master: I will let him answer.

A. Oh, no, it was not any discount on the bonds. 8906
It was expenses in floating that issue. What they were I am unable to say at this stage of the game, but the original vouchers can be turned up and demonstrated and shown to you.

Q. Are they in existence?

A. Absolutely.

Mr. O'Brien: Your Honor, that only illustrates my objection of yesterday, that the operating ledger of a given year is of no use standing alone. It might be offered as a ledger without any supporting books. One ledger standing alone is, of course, of no 8907
service.

The Master: I appreciate that.

Q. Go to the next account now, Mr. Brundage, "Gas Appliances Rented. To Gas Appliances"—and various amounts set opposite on page 3 of the Journal for 1918.

A. Yes.

Q. There are references made here in the first column, page 172; that will be the operating ledger?

A. It will.

8908 Q. And page 226 would be the operating ledger, would it?

A. Yes.

Q. In the first column?

A. Yes.

Q. What does No. 8 mean?

A. That is the number of the journal entry.

Q. Does that figure appear on any other page or any other book?

A. No, sir.

Q. What is that used for?

A. A serial number of all these entries. You
8909 will find a serial number on each one.

Q. See if I read this correctly: "For the invoice cost of gas appliances delivered from stock to consumers on rental during the month of January, 1918, as per monthly appliance inventories".

A. Right.

Q. What does that mean in common language?

Mr. Ransom: That language is common enough.

A. That means, sir, that the commercial department during the month of January, 1918, under rental agreement with consumers, sent out certain
8910 appliances on rental and reported them to the accounting department. The invoice cost of those appliances so sent out was $41,788, and we thereupon credit the stock account, gas appliances, which represents the appliances in stock—we credit that account with what has gone out and charge the account, Gas Appliances Rented, representing the value of the appliances on the district on rental.

The Master: And reducing the number of appliances to the debit of the other account?

The Witness: The stock account has been decreased by what has gone out of it, and the stock of the district has gone out.

Q. Does this, covering Hester street branch, 15th 8911
street branch, 57th street branch and Third avenue branch, purport then to cover the amount of the rental contracts?

A. No, sir, they do not.

The Master: They do not. The witness says they purport to cover the value of the machines rented out.

Mr. O'Brien: Whatever it is, it does not change my question, your Honor.

The Master: But it does change your question.

Q. They purport to show some moneys or some 8912
value for the month of January, do they not?

A. They show the invoice cost of the appliances taken out of stock during the month of January and sent out on the district on rental.

Q. How do they come to make this, the 8th entry of the month of January, in the very beginning of the month, if it covers the whole month?

A. It is not made at the beginning of the month. As I have already testified, these journal entries are made as of the last day of the month. They are a monthly routine and these are made from reports received by the accounting department applicable to business for the month of January. 8913

Q. Is there added to that invoice cost any of the cost of handling, the labor?

A. No, sir; invoice cost of the appliances.

Q. Is there any record in any one of your books of account where you have assembled the invoice cost of these appliances, plus the cost of handling, the labor, the cartage and all that?

A. To get them on the district?

Q. Yes.

8914 A. To get them on the district, that expense is charged to operation, operating expense, cost of appliances. You will find such an account in the operating ledger.

Q. You mean in connection with work done on consumers' premises?

A. Yes, sir.

Q. Is there any account where you have it all assembled, showing just what the actual cost is to deliver ranges to the people who rent them?

A. We know what it costs us to set appliances for every month and for every cumulative period.

8915 Q. That is what I mean. You have got, then, collected, the data of the appliance business so you could tell not only the invoice cost of the appliances rented at a given time, but all the incidental labor?

A. You have an account you will find in the ledger representing setting appliances on the district.

Q. You have one for maintaining appliances?

A. You will find another account, "Repairs to Appliances", showing the cost of keeping them up and rendering the service.

Q. You maintain them where they are rented; you guarantee to keep them in repair?

8916 A. Yes.

Q. And where there is a complaint made that they do not work right, you send some male or female employee to test them out and see whether the appliance is in good or bad order?

A. You will find an account in the books for that, under the title of "Adjusting and Repairing Appliances on the District".

Q. And that time and that expense is embodied in that account, is it?

A. It is.

Q. Then as to the cost of making changes, tak- 8917
ing one out and putting in another, labor and material expense, where is that recorded?

A. In the adjusting and repairing.

Q. Is there any account or is there any record or any report where all of the work and expense involved, for labor and material, in connection with the renting of appliances, is gathered together so that you know whether that business is being conducted at a profit or a loss?

A. All the appliance business?

Q. Yes.

A. Not in any computation that I have ever seen, 8918
counsellor.

Q. Is there any account where you charge up the proportional expense of show rooms, where the appliances are kept?

A. No, sir.

Q. For the State?

A. No, sir.

Q. Is there any account where you charge up the amount of telephoning and advertising expense, promotion expense, in connection with the appliance business?

A. No, sir. 8919

Q. Any account where you gather together the amount of stationery expense that is incurred in connection with the appliance business?

Mr. Ransom: I object to this.

A. No, we do not keep our accounts in that way.

The Master: I will let Mr. O'Brien finish on this line.

Mr. Ransom: I have not objected in some time, but it is not a proper line of examina-

8920 tion; it is not cross-examination. I am willing that anything in general that the witness knows, that is pertinent to the case should be brought out.

The Master: I have ruled on it.

Q. Is there a business done with the other companies in the matter of either renting or selling appliances? I refer to the affiliated companies?

A. I think there have been times when the Consolidated has sold appliances that they had previously bought for their own use, and sold to the other companies.

8921 Q. Has that been the practice of the company?

A. There have been such cases, not frequently, but there have been such cases. That is not the general practice.

Q. But there are cases where you loan appliances?

A. To other companies?

Q. Yes.

A. Not that I ever heard of.

Q. Well, you have loaned them to somebody?

A. Yes, we have a few appliances out on loan.

Q. And I have noticed in one of the earlier records, in 1906, in many of the appliance accounts
8922 you have entered an item there, "Loan"?

A. Yes.

Q. Those were not loaned to another company, but loaned to some individual?

A. No, that comes in more or less all the time, Counsellor O'Brien. Some Red Cross affair comes along and they want to borrow an appliance for a week, and we loan it to them without making any charge for it, and credit our account and charge gas appliance loan, and the next month it comes back,

and this goes on, these things happen for various 8923
charitable purposes with some frequency, and you will find the account in your books when you come to examine them, gas appliance account.

Q. We will assume they are all charity and not loaned to other companies?

A. Yes, there is no loan to other companies for appliances, absolutely not.

Q. Who determines the amount of depreciation you set up in your appliance account?

Mr. Ransom: Objected to as not within the scope of the cross-examination.

The Master: I think it is. 8924

Mr. Ransom: We have not shown there is any depreciation set up.

The Master: Who sets up depreciation?

The Witness: There is nothing written off for depreciation in any recent years. Quite some years ago there was an allowance made reducing the book value of our appliances on the district.

Q. When did that practice cease to be followed?

A. Oh, I can't say just how many years ago.

Q. Well, you could by consulting your books, couldn't you?

A. Oh, yes, it is a matter of record. 8925

Q. Would you say three or four years ago?

A. I should say more than that; probably six years ago.

Q. Up to that time, then, to 1906, there was a practice of writing off a certain amount for depreciation?

A. Writing down the book value of appliances on the districts.

8926 Q. And who determined the amount that was written off?

A. My recollection is that it was based on a percentage of the value on the district.

The Master: Who fixed the percentage?

The Witness: I should say that one of our executive officers, undoubtedly. I would not assume to rule on a question of that kind.

Q. Would the journal of 1906 show about that?

A. As to the entry?

Q. Yes.

A. Undoubtedly yes. As to who authorized it, I
8927 don't believe it would show it.

Q. That is what I mean, what does it show?

A. No, I don't believe it would show that.

Q. Is there a journal entry showing why they stopped doing that, or is there some executive officer that indicates why they stopped doing it five or six years ago?

A. Well, a journal entry would not show. That record would simply show an entry up to that time, that they were made, and then it would not appear any more.

The Master: Is there any record that would indicate an order by the company to discon-
8928 tinue it in some form?

The Witness: No.

Q. Am I to assume where I rent, say, 100 Reliable Ranges and 50 Peerless Ranges, and I have the Reliable since 1912 and the Peerless for the last four or five years, is there any record kept which shows the amount that is written off if anything, and are those records——

The Master: That is already answered. He said nothing is written off. They carried it at the same amount.

Q. Are they carried at the same amount, same 8929
invoice price, year after year?

A. Yes, sir.

Q. Even they may have been in the hands of the renters for ten years?

A. We do not write that asset down, we keep it at its original invoice cost for the appliances we rent you.

Q. Then have you in these books that have been offered in evidence for 1918 and 1919, have you there set up in any account, gathered together, the full amount of the invoice cost of the appliances now out? 8930

A. We have set up there in an account the book value of the appliances out on rental. You will find it under the title "Gas appliances rented".

Q. There you would have the sum total of the invoice cost of the appliances that are now out on rental?

A. That would not be strictly so, because of the practice that I have described some years ago of writing it down, with the result that the balance today cannot be said to be the invoice cost.

Q. You say you have a practice of writing it down? 8931

The Master: Objection sustained.

Mr. O'Brien: Just a minute.

The Master: No, objection sustained. It is perfectly clear as to what the witness said. I won't permit any further questions on it.

Mr. O'Brien: Will the stenographer read the last answer.

(The answer was read by the stenographer.)

Mr. O'Brien: Oh yes, I understand it now.

8932 Q. It would be the invoice cost as to those that were rented since 1906, or as to those I mean, since 1912, sir.

The Master: Objection sustained.

Q. Have you a report, Mr. Brundage, or a record anywhere in which is gathered together the costs, additional costs over invoice prices for appliances?

The Master: Objection sustained. It has been answered.

Q. Has any investigation ever been made by you or any officer of the company, to your knowledge, or employee, into that matter?

8933 A. Of the gas appliance business?

Q. Yes.

A. No, sir, not by my department, nor by me, that I know of. I know I never did, never went into it, further than is reflected in our books of account.

Q. Well, you advertise appliances?

Mr. Ransom: I object to it.

The Master: Objection sustained.

Mr. Ransom: That is not proper cross-examination.

Mr. O'Brien: I want to bring out the fact that there are various elements of expense that

8934 are not covered by any——

The Master: You have brought it out.

Mr. Ransom: Not covered by any what?

Mr. O'Brien: By any account.

Q. I will ask the witness to take the telephone account. How is that?

The Master: Yes, you brought it out, to an extent.

Q. You have got promoters, have you not, men that do promoting, that is canvassing?

A. Yes, we have canvassers. 8935

Q. And how is their salary allocated?

A. They are charged to canvassing, one of our promotion expenses.

Q. Well, is there any of that that goes into an account that is related to gas appliances?

A. Not specifically.

The Master: You have got it perfectly clear, that these books do not show a profit or loss on handling the appliance end of the business.

Mr. Ransom: That is not quite true.

The Master: What?

Mr. Ransom: That is not quite true, because 8936
these accounts are charged to certain headings which are prescribed by law.

The Master: Yes, but they are not allocated against this business.

Mr. Ransom: He says they have not been combined in any one place so as to bring them together in any one place.

The Master: They have not been allocated either?

Mr. Ransom: In certain instances not allocated.

The Master: That is why you can't tell ac-
curately what the profit and loss is? 8937

Mr. Ransom: That is why Mr. Teele makes such a combination and reaches the profit and loss.

The Master: But Mr. Brundage's testimony is that these books do not show by an allocation of expense the profit and loss on the appliance business, is that correct?

The Witness: Correct, sir. I so testified.

8938 Q. Mr. Brundage, how are the records kept of repairs and appliances?

The Master: Objection sustained. He told us that. He told us the name of the account.

Mr. O'Brien: No, I am going into another matter now.

The Master: Go into another matter. You are in a matter which is already covered.

Q. Is there a set of books kept by the company at 111th Street and First Avenue in the meter repair shop?

A. Certainly not.

8939 Q. Have you refreshed your memory with regard to Mr. Kelly, who was in charge, or at least under Mr. Curnine, up there?

A. I have not, I have had no occasion to refresh it.

Q. Is Mr. Curnine—is that the name?

A. There is a Mr. Curnine superintendent of that shop.

Q. Is he employed by the Consolidated Gas Company?

Mr. Ransom: I object to that as gone over already.

The Master: Objection sustained.

8940 Mr. O'Brien: It was not gone over.

Mr. Ransom: Mr. O'Brien is just under a misapprehension as to that.

Q. Is there a meter shop maintained there by the Consolidated Gas Company where they repair meters and appliances?

Mr. Ransom: I object to the question.

The Master: Objection sustained. It was inquired into before.

Q. Are the accounts not kept there for the repair 8941
to appliances?

Mr. Ransom: I object to the question.

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. Is there a separate account kept for that branch of the company's business covering repairs to appliances?

Mr. Ransom: I object to the question as thoroughly covered and wholly incompetent.

The Master: Objection sustained.

Q. Is the work done by other companies charged up and billed to the Consolidated Gas Company? 8942

A. I object to the question.

The Master: What is that?

Mr. O'Brien: Is the work of repairing appliances done to any extent by other companies and charged up to the complainant company?

The Master: I will allow that.

Mr. Ransom: I think the question is very indefinite. Does the witness understand it?

The Master: I understand the question to be, Mr. Brundage, do you have some meters repaired by other companies and pay them for it? 8943

The Witness: Meters or appliances, or both?

The Master: Yes.

The Witness: Meters and appliances are repaired by the Standard Gas Light Company and they bill us for that service.

Q. And where are those bills in the records for 1918 recorded?

A. In the operating ledger, and in two accounts.

8944 You will find an account that refer to appliances, and you will find another account, repairs to meters, and there you will find a reference to original sundry creditors' invoices for the charges rendered.

Q. Will you turn to that account?

The Master: No, I won't permit it.

Mr. O'Brien: Your Honor, this is important.

The Master: How?

Mr. O'Brien: The question of bringing out here just what they pay and how they bill those things and whether they pay any bills
8945 sent in and just how the whole thing is conducted.

The Master: I shall rule that that matter has been covered for the purposes of this case. The witness has testified and can only testify now that so far as he knows bills are rendered for work done and approved by the superintendent who has charge of that department, they go through properly vouched for, and they are paid, and then they go through these books.

Mr. O'Brien: I want to turn to the account and ask the witness to determine the witness'
8946 knowledge of that account and the method of transacting the business.

The Master: No, we have had enough of the witness' knowledge of these accounts.

Q. Are the payments made upon the O. K. of Mr. Curnine?

A. No, sir, Mr. Curnine is not employed by the Consolidated Gas Company.

The Master: Who of the Consolidated Gas Company approves these bills for repairs?

The Witness: The Superintendent of the 8947
Meter Department and the price is set out in accordance with a schedule on file in the Accounting Department, so much work done at a certain price, so much money, bill approved and paid. Those are all available for your examiners when you want to see them.

Q. What inspection is made, and how frequently of the accounts and expenses to the Standard Gas Company, so far as the shop is concerned, where appliances are repaired and meters are repaired?

Mr. Ransom: I object to the question.

The Master: Overruled. 8948

The Witness: We are not interested. The Standard agrees to certain work.

Q. Won't you answer my question?

A. I will, very gladly.

The Master: He has already answered it.

Mr. O'Brien: I did not ask him to tell me whether they were interested. I asked him whether there was any investigation made.

The Master: The Master understands the answer to be that they do not, they are not interested, and they do not.

Mr. O'Brien: I understand your Honor rules that I may not ask the witness about the 8949
account that he has referred to?

The Master: Ask your next question, and go on.

Q. Will you turn to that account you just referred to, covering repairs to meters and appliances?

The Master: For what purpose?

Q. At the shop of the Standard Gas Light Company in the operating ledger.

8950 The Master: For what purpose?

Mr. O'Brien: For the purpose of showing the method of O. K.-ing and investigating these bills.

Mr. Ransom: I object to the question.

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. Do all the bills for these repairs come through one man in your employ?

A. They all come to me, properly approved, and are passed to the accounting department, where they are classified, put through the accounting de-
8951 partment routine, posted in the ledger, transferred to the treasurer's department for payment.

Q. Will you name the individual who is charged with the obligation of inspecting these bills and passing upon them?

The Master: As to meters.

The Witness: They are passed on in the first instance by the Consolidated general office meter department.

The Master: And appliances?

The Witness: Yes, sir.

The Master: Both?

The Witness: Both passed on by the same
8952 people.

The Master: What is the name of the man?

The Witness: Mr. Turner, our acting general superintendent of meter shops, passes upon the charges of this work performed in the way of repairing meters and repairing appliances.

Q. And he is still with the company?

A. Yes.

Q. Been with the company a number of years?

8953

A. Yes.

Q. Available as a witness.

A. Yes, he is certainly here.

Q. I mean he is still on the job?

A. Oh, yes.

Q. These repairs——

A. Of course, let me go on and complete that statement, Mr. O'Brien.

Q. What statement?

A. The statement I just told you about, who checks these bills, because in addition to the vise by Mr. Turner, we get a record from the superintendent of the local shop, who received the re- 8954
paired meters and appliances, that he had received such appliances to repair.

Q. Where do you keep a record of the amount paid by the consumer for the repair of an appliance, or the changing of an appliance?

A. Such items as happen in that nature are kept in the commercial department and reach the accounting department in a monthly report.

Q. And how is that styled? Do you know the account I mean, Labor and Material—L and M?

A. Labor and Material stands out all over our accounts. There are small charges made periodi- 8955
cally for work done on the district for a consumer. The arrangement is made through the commercial department, a certain amount of money is collected, and at the end of the month on the monthly reports from the commercial department to the accounting department that record appears

Q. How is that charged up, I mean that particular record?

8956 A. That is charged—there is a charge made to Accounts Receivable, Miscellaneous, and a credit to whatever the work was, setting meters, setting appliances, repairing meters, repairing appliances, so that credit through these charges to the consumer is an offset to the debit from the shop pay roll that did the work.

The Master: We will adourn until Monday at 1:15 P. M.

Adjourned to Monday, September 15, 1919, at 1:15 P. M.

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Last Complainant's Exhibit 280.
Last Defendants' Exhibit U.

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